

Shi'ite Legal Theory

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Shi'ite Legal Theory

Sources and Commentaries

Introduced and edited by
Kumail Rajani and Robert Gleave

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SHI'Ī “FAMILY” OF LEGAL THEORIES: AN INTRODUCTION

Robert Gleave and Kumail Rajani

Shi'ī *uṣūl*, in general, has received little attention in scholarly discussions of Islamic legal theory. Whilst Twelver *uṣūl* has gained some attention, there is almost no coverage of the Isma'īli and Zaydi *uṣūl* traditions.¹ This volume, a collection of eight chapters, aims to a) critically edit hitherto un-edited Shi'ī *uṣūl* manuscripts; b) examine distinctive features of the Shi'ī *uṣūl* tradition when compared to its Sunnī counterpart; and c) highlight the nuances of intra-Shi'ī *uṣūl* discourse addressing questions such as: What makes Isma'īli *uṣūl* different from Zaydi and Twelver *uṣūl*? How is Zaydi *uṣūl* different from Twelver and Isma'īli *uṣūl*? What are the key themes debated in Twelver *uṣūl* which are absent in Zaydi and Isma'īli *uṣūl* traditions? The following introduction addresses these pertinent questions and sets the tone for the subsequent edited texts and their commentaries. A careful side-by-side reading of these texts and commentaries will help us identify distinctive themes peculiar to the Shi'ī “family” of legal theories. It is in detailing these nuances and putting Shi'ī *uṣūl* texts in conversation with each other that this introduction is primarily concerned.

In the Muslim intellectual tradition, God's law (the *sharī'a*) has been the subject of intense scholarly investigation. God has rules; he expects human beings to obey them; he will punish those who do not obey them; he will reward those who follow the rules. These are theological assumptions which underpin Muslim legal discussions. Some scholars have sought to prove these assumptions but the juristic writings of the Muslim tradition (primarily those works falling into the category of *fiqh*) have generally accepted these as discursive ground rules. Discussing what God wishes you to do in a particular situation presupposes, one might say, that God has a rule and that he demands obedience to it.

Alongside these discussions of the content of the *sharī'a*, there has also been a vibrant history of more philosophical or theoretical discussions. That is, some Muslim scholars have gone beyond the question of what the content of God's command might be – they have explored more fundamental questions. Where does God's law come from? Why should human beings obey it in the first place? What was God's purpose in making these rules? How are God's rules to be discovered for situations not covered in the rules God has revealed so far? Who, within the Muslim community, can make a valid pronouncement on the content of the law and must the community obey the rules which that person makes? The answers to these questions have been debated and discussed by Muslim scholars throughout the centuries. They are often associated with a particular genre of literature and tradition of learning called *uṣūl al-fiqh* (“the roots of jurispru-

1 For Twelver *uṣūl* tradition see Gleave, “Imami Shi'ī Legal Theory: From its Origins to the Early Twentieth Century” (Oxford, 2018); *Inevitable Doubt: Two Theories of Shi'ī Jurisprudence* (Leiden, 2000); *Scripturalist Islam* (Leiden, 2007). For other works see al-Ṣadr, *Lessons in Islamic Jurisprudence*, tr. Roy Motahedeh (Oxford, 2010) and *Principles of Islamic Jurisprudence According to Shi'ī Law*, tr. Arif Abdol Hussein (London, 2005); al-ʿAllāma al-Ḥilli, *Foundations of Jurisprudence – An Introduction to Imāmi Shi'ī Legal Theory*, tr. Amjad Shah Naqvi (Leiden, 2016); Bhojani, *Moral Rationalism and Sharī'a* (London, 2015).

dence”), glossed in English language secondary literature as “Islamic legal theory”. This book is a collection of texts of previously unpublished or rare works of *uṣūl al-fiqh*, along with commentaries and summaries of the ideas within the texts. They have all been edited by contributors from manuscripts; they stretch over many centuries and reflect discussions in many different places; they are all taken from the Shi'i Muslim tradition, broadly conceived. The distinctive Shi'i contribution to the history of *uṣūl al-fiqh* has not received the attention it deserves in contemporary scholarship. This volume forms part of wider attempt to bring the richness and diversity of Shi'i *uṣūl* to the wider field.

The term *uṣūl al-fiqh* (often abbreviated to *uṣūl*) refers, primarily, to two linked phenomena. First, *uṣūl al-fiqh* is a topic in the curriculum of nearly all Muslim seminaries (*madrasas*); trainee Muslim professionals are required to discuss the various possible answers to the theoretical questions mentioned above, and they are supposed to bear them in mind when developing and promulgating their version of God's law. Second, the term refers to a specific genre of literature. Though the date of the inception of writings of *uṣūl al-fiqh* is much debated, the *uṣūl* genre became formalised from at least the 4th/10th century. This formalisation comprised the gradual establishment of a consistent structure (with predictable chapter titles in a regular order), a stable set of technical terms (though definitions remained much debated), a canonical group of problemata (often termed *masā'il*) and a distinctive method of argumentation in which these issues were discussed. Once established as both a curriculum subject and a legal genre, *uṣūl al-fiqh* became one of the recognised “religious sciences” (*al-ʿulūm al-dīniyya*) of the post-formative period of Islamic thought. It survives until today as a subject much studied in traditional seminaries across the various schools and traditions. Although the previous abundance of both the study and composition of *uṣūl* has suffered in the transition from the late (or post-) classical to modern periods, it still remains a fundamental element of religious training in many parts of the Muslim world.

Uṣūl al-fiqh works were composed in great volume in the premodern period, and within the broad genre of *uṣūl* there were numerous sub-genres, including extended monographs, epitomes, commentaries, supercommentaries, marginal glosses and short focused treatises. Works of *uṣūl al-fiqh* (perhaps more than works of *fiqh*, in which the rules are laid out in detail) were able to transcend their authors' specific theological and legal schools. As has been remarked, *uṣūl*, because it functions at the elevated, theoretical level, adopts a discourse which rises above the restrictions of a specific tradition.² Nonetheless, since *uṣūl* works are supposed to establish the basis for subsequent legal discussion, argumentation (and the conclusions reached through these arguments) may be distinctive to particular traditions. Despite this internal specificity to a particular Muslim tradition, the assumed audience of works of *uṣūl* appears to be broad, stretching across Muslim sects and schools, and sometimes even beyond the imagined Islamic community. Given the assumed audience (namely, the supposed addressees or readership) of works of *uṣūl al-fiqh*, delimiting a tradition might be seen as problematic: are not all *uṣūl* works in conversation with all other *uṣūl* works? Nonetheless, traditions of *uṣūl* enquiry can (and have) been identified. For example, the well-known division by Ibn Khaldūn of *uṣūl* writings into “juristic” and “theological” has been much discussed by secondary scholarship.³ The identification of the former (i.e. the

2 See Weiss, “Uṣūl-related Madhhab Differences in Āmidī's *Iḥkām*,” in *Studies in Islamic Legal Theory* (Leiden, 2002), pp. 292–313.

3 See, for example, Chaumont, “Introduction” in *Kitāb al-Luma' fī uṣūl al-fiqh* = *Traité de théorie légale*

"juristic" trend) primarily with the Ḥanafī legal school and the latter (the "theological") with the Shāfi'īs has been a very influential typology both within the Muslim intellectual tradition and in much secondary literature. The distinctive structures of works of Ḥanafī and Shāfi'ī legal theory have also been the subject of some analysis and investigation.⁴ Specific *uṣūl* doctrines are associated (or predominate) in particular schools and have become markers for those school: the Mālikīs argue that the actions of the "People of Medina" (*'amal ahl al-Madīna*) have a specific legal authority; the Ḥanafīs promote individual juristic reasoning (stereotypically called *ra'y*); the Shāfi'īs give particular precedence to the results of analogical reasoning (*qiyās*); the Ḥanbalīs give great legal force to isolated reports (*khābar al-wāḥid*); the Zāhirīs demand adherence to the "apparent" meaning of the text and reject *qiyās*; Mu'tazilī *uṣūlīs* require God to be fair, and therefore require him to be clear and unambiguous about what he demands of humanity. The list of these general characteristics supposedly typifies the approach of the traditions of *uṣūl* thought – and it could be extended and elaborated, and greater nuance given to these generalisations. These "distinctive" doctrines, though, are repeated regularly in the literature, and have become almost formulaic characterisations of a particular theoretical or legal trend. For some commentators, these legal theory doctrines represent the unique contribution of each school to the scholastic discipline of Islamic legal theory as found in works of *uṣūl al-fiqh*.

In this volume, we have collected a series of passages taken from works of Islamic legal theory. The authors of these works are all Shi'ī – and the discussions we present here, in general terms, touch on distinctive Shi'ī doctrines, using styles of argumentation which are often distinctively Shi'ī. By "distinctively Shi'ī" we mean that the passages presented in this volume come from authors who adhered to the fundamental Shi'ī belief that the true, designated successor of the Prophet Muḥammad was his cousin and son-in-law, 'Alī b. Abī Ṭālib. For the Shi'a, 'Alī should have been leader of the Muslim community, but the wider community decided, for whatever reason, to ignore this suggestion and other prominent Companions of the Prophet were selected or elected; 'Alī only assumed leadership in 656, a quarter of a century after what was, for Shi'ī Muslims, his rightful time. This commitment to 'Alī represents the defining Shi'ī belief – other doctrines and practices may vary, but all groups described as Shi'ī (both within the Muslim tradition and in secondary literature) promote the legitimacy of 'Alī's claim to religious, spiritual and political leadership. The various Shi'ī traditions dispute how Muslim leadership should have evolved after 'Alī's death in 661, though nearly all hold the view that subsequent leaders of the community should come from 'Alī's descendants.

A commitment to upholding the teaching of 'Alī and his descendants runs alongside the claim that they were (and are) the rightful leaders of the Muslims. The reasoning for the privileging of 'Alī and the assertion of his rightful leadership are linked first to the Prophet's designation of 'Alī as his successor. In addition to this designation, 'Alī – either due to his close familial relationship with the Prophet or due to a more direct divine intervention – has special religious insight, and this gives him and his statements a privileged position in the quest for religious knowledge. Many of the passages in this volume reflect on the implications for legal theory of having leaders (known as Imams) with these special qualities. Whilst the nature of this privilege and how it came about is disputed amongst the various Shi'ī groups, adherence to the person and teachings

musulmane (Berkeley, 1999), pp. 3–35.

4 See, for example, the different division of linguistic discussions in works of *uṣūl* discussed in Kamali, *Principles of Islamic Jurisprudence* (Cambridge, 2003), pp.175–185.

of 'Alī is perhaps the defining Shi'i doctrine. For Shi'a, this special status of 'Alī was transferred to his descendants (either individually or as a group). These theological doctrines have implications for Shi'i legal theory: 'Alī's opinion becomes a legal source alongside that of the Prophet himself, and if 'Alī's descendants inherit his legal authority, then perhaps their opinions can also be legal sources. If, as a group, his descendants have some particular legal insight and therefore authority, then can their settled opinion (their consensus, perhaps) also be identified as a legal source? Furthermore, what is the relationship between the Prophet's words and statements and those of 'Alī and his descendants? What is the relationship between these sources and the Qur'an? What happens if these two sources appear in conflict with one another? How might one verify that the opinion of 'Alī's descendants has been accurately transmitted and that the meaning is fully grasped? These, and many other, questions emerge and they are primarily dealt within works of *uṣūl al-fiqh*, and examples of such works are edited and presented in this volume.

The designation of 'Alī, the elevated position of the Prophet's descendants through 'Alī and Fāṭima and the authority (legal or otherwise) of the Imam (manifest or hidden) became hallmark of Shi'i doctrines. There are, though, other tendencies in the various Shi'i traditions of legal theory exemplified in the texts below. Generally speaking, any legal authority the Imam is accorded in the various systems (Isma'ili, Zaydi, Twelver) is tempered by a firm commitment to independent sources of legal knowledge. These independent sources are normally conceived of as "rational" – in the sense that *'aql* (translated here as "reason") is considered to have the ability to discover or delineate ethico-legal truths. For nearly all the Shi'i traditions examined in this volume, "reason" (either as a human faculty, or as a non-subject, almost scientific, method of deduction) can lead to truth alongside the straightforward dicta of authoritative individuals. *'Aql* is also seen as moderating the operations of legal hermeneutics: If one is to interpret the dicta of authoritative individuals (God, the Prophet, 'Alī and his descendants), the hermeneutic rules one follows to interpret them should be (rationally speaking) justified. This perspective comes, of course, from the complex relationship all the Shi'i traditions have with the Mu'tazili theological school. Even the more traditionalist jurists of the Zaydi and Twelver schools were, broadly speaking, working within a Mu'tazili framework. In fact, many of these jurists made major contributions to the development of the Mu'tazili ideas more generally, particularly in the early period. The alignment between Mu'tazili and Shi'i trends has been explored by others,⁵ but in the field of *uṣūl al-fiqh* the relationship is usually explicit, including regular references to Mu'tazili works and authorities. Furthermore, in the early classical period, it is perhaps true to say that the Isma'ili tradition incorporated philosophical rationalism more readily than the other Shi'i traditions. This is reflected in Isma'ili legal writings, though works in this limited corpus do not, generally speaking, venture into theoretical speculation around the law. Nonetheless, a certain philosophical interest can be seen even in the text presented in this volume when discussing the methods of interpreting the Imam's words and the nature of linguistic communication more generally. Furthermore, the operations of language – when used by God, Prophets, Imams or humans – represent a knowledge source for these writers which modulates the process of interpretation. This is a feature the Shi'i writers share with the wider tradition of *uṣūl* writing. Generally speaking, investigations into the workings of language were viewed as essential tools to interpret the in-

5 See, for example, Madelung, "Imamism and Mu'tazilite Theology," in *Le Shi'ism Imamite* (Paris, 1970), pp. 13–29; Ansari and Schmidtke, "The Twelver Shi'i Reception of Mu'tazilism," (Atlanta, 2017), pp. 193–310.

tended meaning of the statements of any legal authority (God, Prophet or Imam). The findings of the community's linguistic experts (in particular, the grammarians) functioned as a body of knowledge in the works of *uṣūl al-fiqh* which can, generally speaking, be distinguished from revelatory sources. Indeed, in the more mature *uṣūl* works, there is a series of theological, legal, logico-philosophical and linguistic "postulates" (*mabādī*) which must be first established before the activity of *uṣūl* can begin; to represent this precedence, works of *uṣūl* often began with sections exploring these so-called postulates. For many Shi'i authors, there was a resistance to viewing the sources of law purely in terms of revelatory texts. For them (and for some Sunni authors also), legal theory was nestled within a network of various theoretical, philosophical, theological and linguistic disciplines and bodies of knowledge. These lie alongside the investigation of formal sources (Qur'an, *sunna*, hadith/*akhbār*, *ijmā'*) and are complemented by them. This openness to reason, rationality and alternative (non-revelatory) sources of legal knowledge is not always in evidence in Sunni works, and could also be seen as distinctive of Shi'i *uṣūl al-fiqh* more broadly.

The three Shi'i traditions presented in this volume emerged from contested discussions around the identity and function of the Imam in the post-Muḥammadan era. All the Shi'i groups agreed that the path taken by the Sunni majority was deviant: they disagreed though on what the alternative should be. The history of how these Shi'i traditions emerged and then established themselves is reasonably well covered in existing research. The most basic Shi'i identity marker is, of course, the religious legitimacy of 'Alī's inheritance of the Prophet's position after his death. The continuation of that superiority in the descendants through 'Alī's marriage to the Prophet's daughter Fāṭima, appears part of the original package, or at least was formulated very quickly as 'Alī's two sons, Ḥasan and Ḥusayn, were put forward by the movement as their father's successors. The generations of descendants from Ḥasan and Ḥusayn form an identifiable group within the wider Muslim community. This group is often termed "the People of the House" (*Ahl al-bayt*, meaning the "House" of the Prophet). In some traditions, that name is restricted to a particular set of descendants, in others it has a wider scope. Within Shi'i communities generally, recognition of descent from the Prophet (that is, according someone, "sayyid" status) continues to give individuals privilege and community authority.

The basic divisions between the three Shi'i traditions examined here are recounted in the traditional literature according to the following narrative. Following the death of 'Alī's second son Ḥusayn, many recognised Ḥusayn's designated descendants (one from each generation) to be legitimate leaders, or Imams, of the community. These individuals generally followed a politically quietist path, since Ḥusayn's foray into politics had ended with the terrible slaughter of the Prophet's descendants and their supporters in the Battle of Karbala. Some within the movement wished to continue active political involvement, and this trend coalesced around one of Ḥusayn's younger grandsons, Zayd b. 'Alī. His rebellion in Kufa in 122/740, along with its brutal suppression by the Umayyad political forces, proved the defining point of origin of the Zaydi Shi'i trend. This trend's origins lie, then, in the (failed) rebellion of an Imam who was willing to take on political leadership. These origins were to be reflected in subsequent doctrine around two questions. First, who might be the Imam? He is a descendent from Ḥasan or Ḥusayn for certain, and he should be someone with religious knowledge (i.e. a scholar or *mujtahid*). For Zaydis though, the Imam must also be a military and political leader. Second, what role and authority might the Imam have? Whilst he is not considered infallible by subsequent Zaydis, he is supposed to be the most appropriate person to lead the community. He must demonstrate himself worthy of this position by having the appropriate knowledge and skills (see the section below on "Zaydi *uṣūl*").

Zaydism, broadly speaking, became the home for those Shi'is who wished to pursue a more rebellious path, challenging the existing structures because they had denied the community its legitimate leader. Much of the remainder of the Shi'i movement became, in time, less confrontational and more accommodating with existing political power. This was the case even if these remaining Shi'a still considered any political leader (other than the designed Prophetic descendent) to be unworthy of the position. The contemporary half-brother of Zayd, Muḥammad b. 'Alī (known as Muḥammad al-Bāqir) and his son Ja'far b. Muḥammad (known as Ja'far al-Ṣādiq) were widely viewed within the Shi'a as the successor leaders of the Shi'a, and are widely considered politically quietist. These positions were not uncontested though. At the death of each Shi'i Imam, the line of succession was challenged. Following the death of Ja'far in 148/765, one of his older sons, Ismā'il b. Ja'far, was believed to have been designated by Ja'far. However, he was also believed to have pre-deceased his father: how could a designated Imam die before taking office? It was both a theological and political conundrum which resulted in a heated debate leading to a split between those who followed Ismā'il's descendants as the rightful successors (later to become the Isma'ilis), and those who followed another of Ja'far's sons, Mūsā (known as al-Kāẓim). For the former group, Ismā'il and his descendants are the rightful Imams; this group has experienced subsequent internal divisions and splits and the result is a series of independent intellectual traditions within Isma'ili Shi'ism (see the section below on "Isma'ili *uṣūl*"). For the latter group following Mūsā, there continued to be successorship divisions, but the majority ended up supporting five further successor Imams, following a father-son generational transfer. Each transfer of leadership was contested and controversial, but eventually recognised in the historical narrative. The twelfth Imam in the line of 'Alī was named Muḥammad; as a child he is said to have first been concealed from nearly all Shi'a in 874, and then from all humanity after 941. For these "Twelver" Shi'is, the Twelfth Imam is present in the world, but hidden from human sight and communication. His concealment is not permanent though – he will, the Twelvers believe, reappear at the appointed time. When he does reappear, the "Hidden Imam" will gain control and restore the rightful leadership of the descendants of 'Alī. The Twelvers make up the majority of Shi'a today, and are in a state of permanent anticipation of the returning Twelfth Imam. This theological belief has filtered through into legal theory, and its effect can be seen in the section below on "Twelver *uṣūl*" and in the relevant sections of this volume (Chapters 1–5).

Whether the origin stories of these three Shi'i traditions (Zaydi, Isma'ili, Twelver) are historical or mythical, the theological commitments which come out of this early history form the backdrop for many elements of the legal theory in the texts presented in this volume. The Twelvers' loss of access to their Imam means, for some scholars, a loss of certainty as to the content of the law; the epistemological ramifications of this loss are worked out in Twelver *uṣūl* texts. The Zaydi commitment to the legal authority of the descendants of Ḥasan and Ḥusayn establishes the unique legal authority accorded to the consensus of these descendants. In the various Isma'ili traditions, the presence of the Imam (or his trusted representative – the *dā'i muṭlaq*) means religious certainty is more readily available, and the need for *uṣūl al-fiqh* (with its speculative approach to the law) is therefore substantially reduced. In these ways, the stories of the formation of any particular Shi'i trend feed through into their legal theory. The traditions brought together in this volume are discrete and operate with their own rules and modalities: in their mature phases, at least, they were (mostly) internally focused, with limited intra-Shi'i intellectual communication. Nonetheless, their shared commitment to the Imam as the crucial operator of the law (namely, the belief that the appropriate descendent from 'Alī b. Abī Ṭālib holds a central

role in legal exposition) makes Zaydis, Isma'ilis and Twelvers a "family" of legal theory traditions. Understanding this family of traditions will, we hope, be facilitated by bringing together these texts in a single volume.

Zaydi *uṣūl*

In many ways, Zaydi *uṣūl* writings run parallel to the vast majority of (classical) Sunni (and particularly Mu'tazilī) works of *uṣūl al-fiqh*. This has led some to (almost) characterise the early Zaydi works as Mu'tazilī first and Zaydi second.⁶ Some compositions are, perhaps, best described not as works of Zaydi *uṣūl* but rather works of Mu'tazilī *uṣūl* composed by Zaydis. Nonetheless, as the Zaydi tradition of *uṣūl al-fiqh* established a corpus of works, a distinctive (and relatively stable) constellation of doctrines began to appear. There are doctrines which are not all obviously Shi'i in origin. There is a general (but not unanimous) commitment to the doctrine known as *taṣwīb* (i.e. *kull mujtahid muṣīb*: all *mujtahids* are correct) in the classical Zaydi *uṣūl* works – as opposed to the doctrine that only one of disputing *mujtahids* can be correct (*al-ḥaqq fī l-wāḥid*) with the others mistaken (*mukhṭi'*), the position is known as *takhṭi'a*. The reason for this Zaydi commitment to *taṣwīb* are nicely expressed in Ṣārim al-Dīn al-Wazīr's *al-Fuṣūl al-lu'lu'iyya* where the pragmatism underpinning the general Zaydi commitment to *taṣwīb* is explained:

From the Four [Sunni] jurists, both *taṣwīb* and *takhṭi'a* are reported. Both the opinion and the practice of our [i.e. Zaydi] early Imams indicate the *taṣwīb* position – just as is the case with the later [Zaydi Imams]. It may have been the case that the statements of some of the [later Zaydi Imams] indicate *takhṭi'a*. This is the opinion of some of their followers, and on the basis of this, the Qāsimiyya of Daylam and the Nāṣiriyya of Jil accused each other of being mistaken (*yukhaṭṭi' ba'ḍuhum ba'ḍan*) up until the time of al-Mahdī Abū 'Abdallāh b. al-Dā'i. It then became clear to them that every *mujtahid* is correct. In the same way, most of the Yaḥyawiyya in Yemen declared anyone who opposed Yaḥyā to be mistaken until the time of al-Mutawakkil Aḥmad b. Sulaymān.⁷

Internal splits within the Zaydis had led to their being different Imams in different political domains. Doctrinally, the questions obviously emerged as to which of these contemporaneous Imams was the "true" Imam, and therefore which band of supporters were in the right, and which can be criticised (and even fought) for being wrong. These divisions – whether in the Caspian or in Yemen where the various Zaydi dynasties had established themselves – were undermining community cohesion. The solution, as it is presented here, was to first adopt the *taṣwīb* doctrine, and then to argue that the choice of Imam was a matter of *ijtihād*. Since "all *mujtahids* are correct" the different groupings were able to recognise the value of their opponents' positions, and thereby reduce community tension. Critically, the quote from Ṣārim al-Dīn indicates that the adoption of *taṣwīb* was a political choice by the ruling Imams. That is, *taṣwīb* was, in part, a doctrine adopted out political pragmatism and with regard to specific Zaydi political contexts. Of course, it was also held (for different reasons) by many other *uṣūl* writers, but it is clear

6 See Temel, "Was There a Zaydī *uṣūl al-fiqh*? Searching for the Essence of Zaydī Legal Theory in the School's First Complete *Uṣūl* Work: al-Natiq bi-l-Ḥaqq's (340–424/951–1033) "*al-Mujzī fī uṣūl al-fiqh*," *Insan and Toplum* 6 (2016), pp. 73–74.

7 Al-Wazīr, *al-Fuṣūl al-lu'lu'iyya fī uṣūl fiqh al-'itra al-zakiyya wa-a'lām al-umma al-muḥammadiyya* (McLean, VA, 1422/2001), p. 379.

taṣwīb's political convenience was a factor in its adoption by the vast majority of Zaydi *uṣūl* writers in the classical and late classical periods. By contrast, within the Shi'i traditions, the Twelver position has been overwhelmingly *takḥīṭ*'a, with the affirmation that there is only one correct opinion; this opinion is identical with God's intention for humankind (*murād Allāh*), and those holding incorrect opinions may be excused (*ma'dhūr*) for their error and even rewarded for their efforts – they are, though, nonetheless wrong.

Taṣwīb is a Zaydi doctrine shared with the wider *uṣūl* tradition. There is a more distinctively Zaydi doctrine in the commitment to the consensus of the descendants of the Prophet (*ijmā' al-ʿitra*, *ijmā' Ahl al-bayt*) as a proof. This sits alongside wider community consensus in Zaydi works of *uṣūl*, so the broadly Sunni doctrine of *ijmā'* is incorporated and supplemented. The Twelver view that *ijmā'* depends on the inclusion of the sinless Imam is roundly rejected, since, for Zaydis, the Imams are fallible *mujtahids* rather than Sinless Lawgivers. The doctrine of *ijmā' al-ʿitra* appears to have embedded itself in the Zaydi *uṣūl* canon early in the Zaydi development of the field. It was entertained by some (non-Zaydi) Mu'tazilis before it was adopted in Zaydi *uṣūl* works, and even then, some early Zaydi works do not discuss the doctrine in any detail at all. The evidence for *ijmā' al-ʿitra* being a proof lies, for Zaydis, in hadith reports (often drawn from a shared Sunni and Twelver Shi'i corpus) in which the descendants of the Prophet (as a collective) are described in glowing and protected terms.

Another doctrine which illustrates the Zaydis' Shi'i character is the doctrinal discussion of the legal authority of a recorded opinion of one of the Prophet's Companions. This is discussed at length, of course, in Sunni works of *uṣūl*; it is mentioned and rejected in Twelver works. In the Zaydi texts, there is a regular affirmation that one can accept the opinion of a Companion as included within the general category of "*sunna*", and that their opinion can be relied upon in legal argumentation (*mustanad*). However, there are caveats. For example, for most jurists and hadith transmitters from the Sunni schools, all the Companions have high moral probity (*ʿudūl*); for Zaydis, only those "who do not display transgressive behaviour (*fisq*), like those who killed *al-waṣī* [i.e. 'Alī] and did not repent" are counted as having high moral probity.⁸ A further example can be found in the listing of the sources of law at the outset of any *uṣūl* work. It was not uncommon for the usual "four sources" (i.e. Qur'an, *sunna*, *ijmā'* and *qiyās*) to be supplemented by additional sources, amongst which is the opinion of 'Alī (*qawl al-waṣī*).⁹ The opinion of a Companion of the Prophet (since they lived and worked alongside the Prophet himself, and they were themselves pious and trustworthy individuals) could be seen as evidence of the Prophet's own opinion and actions. That there is a special position reserved for 'Alī's opinion can be seen from the text edited in this collection (Chapter 7), where al-Mu'ayyadī states, "as for the *waṣī* ('Alī), his opinions have a particular probative force (*ḥujjiyyat qawlihi*). Some say [it has probative force] in matters where there can only be one correct answer; others say it has probative force absolutely [in all matters]; and yet others say that it doesn't matter if you believe in *taṣwīb*

8 Al-Wazīr, *al-Fuṣūl al-lu'lu'īyya*, p. 308.

9 Note here the Zaydi acceptance of *qiyās* which contrasts with the Twelver Shi'i rejection of this hermeneutic mechanism and source. On the variable list of Zaydi "sources" of law, see (as an example) Aḥmad b. Muḥammad Luqmān's (d. 1039/1629) commentary of the famous *matn al-Kāfī* by Muḥammad b. Yaḥyā b. Muḥammad Bahrān (d. 957/1550). See Muḥammad b. Yaḥyā, *al-Kāshif li-dhawī l-ʿuqūl ʿan wujūh maʿānī l-Kāfī bi-nayl al-suʿal* (Sana'a, 1425/2004) p. 55, n. 4: *wa-zāda baʿḍuhum al-ʿaql wa-qawl al-waṣī wa-qawl al-ṣaḥābi*.

or in *al-ḥaqq fī l-wāḥid*, it is absolutely authoritative on account of [ʿAlī's] sinlessness (*li-dalīl al-ʿiṣma*), [as proven by statements such as] 'the truth is with ʿAlī'... and others which are transmitted through multiple transmission chains with the same meaning". For al-Muʿayyadi, at least, ʿAlī's opinion appears to be a stronger proof within a legal argument than those of the other Companions on account of his special status within the Shi'i framework. A longer list of distinctively Shi'i (and specifically Zaydi) doctrines awaits a more detailed analysis of the Zaydi *uṣūl* tradition. What is clear, though, is that in places the Zaydi writings of *uṣūl al-fiqh* appear unexceptional when compared with other (non-Zaydi) discussions on the same topic – as one sees with discussions around *qiyās* (see the edition of the *ḥāshiyas* on Ṣārim al-Dīn al-Wazīr's chapter on *qiyās* from *al-Fuṣūl al-lu'lu'iyya* in Chapter 6); at other times, the doctrines are distinctively Shi'i, and sometimes specifically Zaydi in expression. It is in the latter, one might argue, that the Zaydi *uṣūl* tradition creates its own space, separate from the Sunni/Muʿtazili context in which it appears to have had its origins.

In terms of the internal Zaydi history of *uṣūl al-fiqh*, the narrative begins with a description of Imam Zayd's legal principles. For many Zaydi commentators, this is quite straightforward: Zayd's legal pronouncements continue to have influence because they are recognised as based on (1) the Qur'an, (2) transmissions from the Prophet, and (3) transmissions from Imam ʿAlī.¹⁰ The textual record of Imam Zayd b. ʿAlī's legal positions is, in historical terms, problematic, and hence determining his supposed legal method (i.e. his *uṣūl*) is a historical challenge.¹¹ Following Zayd's death, though, the narrative is presented as a history of persecution of all who were associated with him, and in the next generation, those who were associated with the "school" he established. As one commentator put it, "most of the pupils of Imam Zayd and those members of the Prophet's family (*Ahl al-bayt*) close to him were either killed alongside him, or fled, or were thrown into prison. For this reason, there are very few legal sources [from this period]...".¹² This persecution prevents us knowing even the names of adherents, let alone their ideas. The emergence of a distinctive Zaydi self-identity is normally dated to the 3rd Hijri century (9th Century CE) with the emergence of significant scholar-Imams including the two well-known figures: al-Imām al-Qāsim b. Ibrāhīm al-Rassī (d. 246/861) and al-Imām al-Ḥasan b. Yaḥyā (d. 260/873). Some of this crop of scholars were the grandchildren and great-grandchildren of Imam Zayd himself; all were identified as descendants of Prophet through ʿAlī, and therefore members of the "People of the House". This connection between scholarly prowess and descent from ʿAlī was to become a defining feature of the institutions of Zaydi theology and law. The later elaboration of

10 An account of the development of Zaydi *uṣūl al-fiqh* is given, from within the tradition itself, by Muḥammad Yaḥyā Sālīm ʿAzzān in his introduction to the edition of Ṣārim al-Dīn al-Wazīr's *al-Fuṣūl al-lu'lu'iyya*. ʿAzzān embeds the history of Zaydi *uṣūl* within a broader account of Zaydi law, beginning with al-Imām Zayd b. ʿAlī himself. Although, of course, at the time of Zayd (d. 122/740) *uṣūl* cannot be considered a discipline or a genre of legal composition, ʿAzzān's account is informative as to how the Zaydi tradition views its own legal origins, and particularly the emergence of legal theoretical reflections amongst the Zaydi Shi'a.

11 The need to identify not only a set of legal pronouncements but also a coherent legal methodology (a "proto-*uṣūl al-fiqh*" one might say) is a common feature of internal histories of legal *madhabs*, and is linked to the promotion of the school eponym as a tactic to create school coherence and continuity through time. It rarely has significant historical value, though it is extremely useful for understanding how *madhhab*'s self-image has developed through time.

12 Muḥammad Yaḥyā Sālīm ʿAzzān in his introduction of al-Wazīr, *al-Fuṣūl al-lu'lu'iyya*, p. 14.

the doctrine of the “scholar-Imam” who should be a warrior (*mujāhid*), a learned jurist (*mujtahid*) and a skilled leader of the people (*imām*) has its roots in the archetypes developed in this period.

Though formal works of *uṣūl* were yet to emerge, the surviving writings we have of al-Qāsim b. Ibrāhīm reveal a recognition of the disputed nature of certain foundational legal principles, and therefore a legal reflectivity which later infused the discipline of *uṣūl al-fiqh*. Though primarily a theologian, al-Rassī reportedly held that the consensus of the Family of the Prophet was a legal proof, and the opinions of ‘Alī were authoritative in establishing legal positions. The extent to which these doctrines can be considered *uṣūl* in its legal theoretical sense is debateable, but these doctrines do form some of the foundational *uṣūl* doctrines of the later Zaydi tradition. In theological matters, the Zaydi engagement with Mu‘tazilī principles is now better known – thanks to a body of detailed textual work from the 1960s onwards.¹³ This engagement inevitably had its effect on the emergence of Zaydi legal reflection, and (in time) on the composition of Zaydi works of *uṣūl al-fiqh*. Politically, Zaydi imamate in Yemen and in the Caspian region (Daylam and then Tabaristan) were established, and works on *uṣūl* topics are attributed to al-Rassī’s grandson, the Imam of the Yemeni imamate, Yaḥyā al-Hādī ilā l-Ḥaqq (d. 298/911), particularly a treatise on *qiyās* (analogical reasoning). That treatise does not appear overly legal in its content, though it clearly has legal implications; the discussion begins with an examination of the differences of opinion amongst the community (*al-umma*). With a focus on knowledge as preserved by the “People of the [Prophet’s] House”, these differences are partly due to the community forgetting the doctrines laid down in the early period; more important as a cause, though, is scholars’ turning away from the knowledge of their forefathers, and turning to those outside this group for knowledge. In this context, *qiyās* is of two types: (1) invalid (*bāṭil*) which is derived from sources other than the Qur’an, and is based purely on personal opinion; and (2) valid (*ṣaḥiḥ*) which a scholar performs when he thinks over and considers a matter from the Book of God and the *sunna* of God’s Prophet. In this context, performing *qiyās* on something (*qāsahu*) is glossed as “he arranged it” (*dabbarahu*) and “he considered it” (*naẓarahu*). This latter process is, we learn, dependent on the knowledge the scholar uses in his contemplation being based on the “knowledge of their fathers and grandfathers (*‘ilm ābā’ihim wa-ajdādihim*)”.¹⁴ Whilst these musings undoubtedly have legal import – and perhaps are based on the debate around analogical reasoning during al-Hādī’s time – they do not really constitute much more than a very general (perhaps cursory) discussion of *qiyās*. The treatise does, though, establish the emergence of legal theoretical reflection in Zaydi writings, and the importance of the heritage of the family of the Prophet as preservers of the proper interpretation of Qur’an and *sunna*. These positions were to establish themselves as fundamental Zaydi *uṣūl* doctrines as the discipline became more systematised. In *fiqh*, the legal positions found in al-Hādī’s legal works – the *Kitāb al-muntakhab* and *Kitāb al-aḥkām* – became the basis for Zaydi juristic thinking and probably legal practice also, giving rise to the dominance of the “Hādawī” school. The school was less compromising on fundamental Shi‘i doctrines (including holding that the caliphates of Abū Bakr and ‘Umar were illegitimate), and emphasised a distinct, Zaydi legal identity. There are references to works of Zaydi *uṣūl* (such as *al-Ibāna* of ‘Alī b. Mūsā al-Banāndashtī) but these do not appear to have survived (or arguably, may not have been, *stricto sensu*, works of *uṣūl al-fiqh*); they do, though, represent continued

13 Schmidtke, “The History of Zaydi Studies: An Introduction,” *Arabica* 59 (2012), pp. 185–199.

14 Al-Hādī ilā l-Ḥaqq, “Kitāb al-qiyās,” in *Majmū‘ rasā’il al-Imām al-Hādī ilā l-Ḥaqq* (Sana‘a, 1421/2001), pp. 486–503.

Zaydi reflection on issues of legal theoretical import.

From the 9th century CE onwards, there were two main areas of Zaydi leadership: Yemen (legally dominated by the *Hādawī* school) and the Caspian region. Each had its own Zaydi imamate and separate systems of religious learning, and titles of *uṣūl* works composed in both locations are recorded, and shorter treatises dealing with individual *uṣūl* questions were also composed. Zaydi scholars, though, moved across the Abbasid caliphate, forging intellectual relationships with various schools in Baghdad, and working particularly closely with the Mu'tazila. A fused Zaydi-Mu'tazilī trend emerged in this period's literature. The surviving Zaydi works of *uṣūl* (which might be better described as works of Mu'tazilī *uṣūl* by Zaydi authors) demonstrate the scholarly integration of Zaydis into the Mu'tazila school. In the Caspian, the work of the 11th century CE Imam Abū Ṭālib Yaḥyā b. al-Ḥusayn al-Hārūnī al-Nāṭiq bi-l-Ḥaqq (d. 424/1033) signals the high-point of Caspian Zaydi intellectual production. Al-Nāṭiq bi-l-Ḥaqq's *al-Mujzī fī uṣūl al-fiqh*, as has been discussed by others, is heavily influenced by Mu'tazilī excursions into *uṣūl al-fiqh* topics. In it, al-Nāṭiq bi-l-Ḥaqq reflects the *uṣūl* doctrine of Abū 'Abdallāh al-Baṣrī (d. 369/980), a Ḥanafī Mu'tazilī of the school of Abu Hāshim al-Jubbā'ī (d. 321/933). The Mu'tazilī character of the work is so pronounced that modern editors¹⁵ even published it thinking it was not a Zaydi work at all, but part of the oeuvre of Abū l-Ḥusayn al-Baṣrī (d. 436/1044, author of the famous Mu'tazilī work of *uṣūl al-fiqh*, *al-Mu'tamad fī uṣūl al-fiqh*). That there is little distinctively Zaydi in al-Nāṭiq bi-l-Ḥaqq's *al-Mujzī* has been noted;¹⁶ however, *al-Mujzī*, along with al-Nāṭiq bi-l-Ḥaqq's other *uṣūl* work *Jawāmi' al-adilla* (a "*khilāf*" work examining disputed views on *uṣūl* issues), marks the beginning of a developed Zaydi discipline of *uṣūl* which, though certainly influenced by Mu'tazilism, grew beyond it into a distinctive tradition of legal theoretical scholarship.¹⁷

Generally speaking, Zaydi *uṣūl* works after *al-Mujzī*, whilst broadly maintaining certain positions inherited from the Mu'tazilī encounter, show a deep familiarity with Sunni *uṣūl* works. We know from other references that the study of standard Sunni *uṣūl* primers was integrated into numerous Zaydi madrasa curricula in subsequent centuries, particularly with the famous *Mukhtaṣar al-muntahā* of Ibn al-Ḥājib (d. 464/1248) and its numerous commentaries. Whilst the intellectual vibrancy of the Caspian Zaydis declined along with the political fortunes of the Imams in the area, the Zaydi imamate in Yemen created a more stable and long-lasting political and intellectual structure. In *fiqh*, as mentioned earlier, the *Hādawī* tradition became dominant, creating a doctrinal base for substantive legal issues. In terms of *uṣūl* works, Yemeni production stepped up in the 6th/12th century. A number of important Zaydi *uṣūl* works were composed in the late 6th/12th and early 7th/13th Centuries. The Imams of the Yemeni Zaydis were major authors of the period: *al-Zāhir fī uṣūl al-fiqh* and *al-Madkhal fī uṣūl al-fiqh* were composed by al-Imām Aḥmad b. Sulaymān, al-Mutawakkil 'alā Allāh; *Ṣafwat al-ikhtiyār fī uṣūl al-fiqh* by Imām 'Abdallāh b. Ḥamza al-Manṣūr bi'llāh was to become a major reference source. The former two

15 Temel, "Was There a Zaydī *uṣūl al-fiqh*?" pp. 73–74.

16 Temel, "Was There a Zaydī *uṣūl al-fiqh*?" pp. 76–79.

17 One could add here the work of the Mu'tazilī al-Ḥakīm al-Jishumī (d. 494/1101), whose *Uyūn al-masā'il* contains a section on *uṣūl al-fiqh* which was influential on subsequent Zaydis (it is reportedly the basis for al-Qādī Ja'far's *al-Bayān*). According to Zaydi sources, he converted to Zaydism towards the end of his life, though how much this is evidenced in his theology and legal theory is yet to be determined. See Ansari and Schmidtke, "The Mu'tazilī and Zaydī Reception of Abū l-Ḥusayn al-Baṣrī's *Kitāb al-Mu'tamad fī Uṣūl al-Fiqh*: A Bibliographical Note," pp. 100–101.

works remain unedited; the latter has been transcribed and circulated on the internet, but apparently unpublished. The *Şafwat* was, according to various sources, actually based on a text from the generation before al-Manşūr, namely *al-Fā'iqa fī uşūl al-fiqh* of Ḥusām al-Dīn al-Ḥasan al-Raşşās (d. 584/1188): a detailed comparison of the two texts might reveal the extent of the dependence between the former and the latter. The famous al-Qāḍī Ja'far al-Bahlūlī (d. 573/1177–9) composed both *al-Taqrīb fī uşūl al-fiqh* and *al-Bayān fī uşūl al-fiqh*. With these various works, the discipline of *uşūl* became firmly established within the Zaydi madrasa curriculum. The venture into *uşūl* was, undoubtedly, linked to the (much more extensive, and more extensively studied) Zaydi engagement with theology, particularly that of the various Mu'tazilī schools. Zaydi scholars were taught by Mu'tazilī masters and incorporated their argumentation into works of distinctively Zaydi theology; given theology's close relationship with *uşūl al-fiqh*, it is not surprising that Zaydi *uşūl* had, in the early days at least, owed a specific debt to Mu'tazilī legal theory.

After a slow start in the composition of *uşūl* compared to the other legal traditions, subsequent centuries saw a speedy rise in the composition of *matn*-style texts and commentaries. Extended monographs continued to be composed, but much intellectual effort went into the production of commentaries, supercommentaries and marginal glosses on primer-style texts. The first such *matn* subjected to extensive commentary was the *Jawharat al-uşūl wa-tadhkirat al-fuḥūl* of Aḥmad b. Muḥammad al-Raşşās (d. 656/1258). The production of a *matn* for commentary in any discipline normally indicates a stable intellectual environment with a canon of doctrines which can be the subject of commentary and gloss in self-perpetuating pedagogic system. This appears to be true of the Zaydi production of *mutūn* dealing with legal theory. Al-Raşşās, a grandchild of the aforementioned Ḥusām al-Dīn al-Raşşās (and hence is often called “the grandson” – *al-ḥafid*), wrote his own commentary on the work, and this was followed by seven major commentaries, and many more glosses and minor commentaries over the next two centuries. In the 9th/15th century, a new *matn* emerged as popular in the Yemeni context: the renowned Zaydi polymath scholar Ibn al-Murtaḍā (i.e. Aḥmad b. Yaḥyā b. al-Murtaḍā d. 840/1436, also known as al-Mahdī Aḥmad) composes his *Mi'yār al-ʿuqūl fī ʿilm al-uşūl*. This becomes the next *matn* to be the subject of commentary.¹⁸ The cycle of *matn*-commentary-supercommentary-gloss-*matn* goes through a number of overlapping iterations until the 11th/17th century with commentaries on the following base texts being the most often cited:

Jawharat al-uşūl wa-tadhkirat al-fuḥūl, Aḥmad al-Raşşās (d. 656/1258)

Mi'yār al-ʿuqūl fī ʿilm al-uşūl, Aḥmad b. Yaḥyā Ibn al-Murtaḍā (d. 840/1436)

Al-Fuṣūl al-lu'lu'iyya, Şārim al-Dīn Ibrāhīm al-Wazīr (d. 914/1508)

Al-Kāfīl, Muḥammad b. Yaḥyā b. Muḥammad Bahrān (d. 957/1550)

Mirqāt al-uşūl, al-Imām Manşūr bi'llāh al-Qāsim (d. 1029/1620)

Ghāyat al-su'ūl fī ʿilm al-uşūl, al-Ḥusayn b. al-Imām al-Qāsim (d. 1050/1640)

Mughnī dhawī l-ʿuqūl fī ma'rifat qawā'id al-uşūl, 'Alī b. Şalāḥ al-Ṭabarī (d. 1071/1660)

18 Ibn al-Murtaḍā also, of course, authors the major work of Zaydi *fiqh* which rises and maintains a position of dominance well into the twentieth century. The introduction to that work forms a brief exposition of *uşūl* issues, expanded upon in the various commentaries, most notable *Sharḥ al-azhār* of Ibn Miftāḥ (d. 877/1472).

The time-scales of their popularity as base texts are shown in the table on page 15. The proliferation of base texts with commentary can be taken as a sign of ongoing debate and discussion amongst those writing *uṣūl*. The repetitive, casuistic and arcane nature of the tradition's cyclical pedagogy frustrated reform-minded scholars in the 18th and 19th centuries CE (most famously, Muḥammad al-Shawkānī, d. 1250/1834). It is clear, though, that the complexity of this later ("post-classical") tradition reveals a highly skilled readership working within an elaborate (for some *over-elaborate*) intellectual framework.

In addition to the plethora of *mutūn*, *sharḥ* and *ḥāshiya* composed on *uṣūl* works, there were a number of influential monographs which, though not attracting extensive commentary, also play a role in further establishing the central doctrines of Zaydi *uṣūl*. Many of these remain unpublished. The major works referenced in the Zaydi bio-bibliographical tradition are nearly all Yemeni, amongst which are:

Al-Muqni' fi uṣūl al-fiqh of al-Imām al-Dā'i Yaḥyā b. al-Muḥsin b. Abī l-Fawāris Maḥfūz (d. 636/1238) – a descendent of al-Hādī ilā l-Ḥaqq. This appears to be a large book – 521 pages in the manuscript in Imam Zayd ibn Ali Cultural Foundation library.

Al-Ḥāwī li-ḥaqā'iq al-adilla al-fiqhiyya of Yaḥyā b. Ḥamza al-Mu'ayyad (d. 745/1346), one of the many claimants to the imamate following the death of al-Mahdī Muḥammad in 1328. Madelung described him as reflecting "a lack of sectarian zeal and an openness to Sunni learning".¹⁹ The work has been edited from the single surviving manuscript (thought lost) by Ṣādiq 'Awwās as a PhD thesis at the Sana'a University (2012).

Qanṭarat al-wuṣūl ilā 'ilm al-uṣūl of the Yemeni scholar, military commander and governor Ṣalāḥ b. Aḥmad b. al-Mahdī al-Mu'ayyadī (d. c. 1044/1634), the section on *ijmā'* of this work is published in Chapter 7 of this volume.

Mughni dhawi l-'uqūl of 'Alī b. Ṣalāḥ al-Ṭabarī (d. 1071/1660) who also wrote a major commentary on Ibn al-Murtaḍā's *Mi'yār*.

Irshād al-fuḥūl ilā taḥqīq al-ḥaqq min 'ilm al-uṣūl by Muḥammad al-Shawkānī (d. 1255/1839). This is, of course, by one of the best-known Zaydi authors, who moved so far from his Zaydi roots that he is hardly considered part of the tradition by contemporary authors. This work is, in effect, an account of different opinions on *uṣūl* matters, and though Zaydi opinions are mentioned, they are not always supported.

The history, then, of Zaydi *uṣūl* writing, at the current stage of research, encompasses a series of distinctive *uṣūl* doctrines (*ijmā' al-'itra*, *qawl al-waṣī* etc.), combined with positions in line with those found in much Sunni (particularly Mu'tazilī) *uṣūl* discussions. In literary terms, this admixture is reflected in early compositions, primarily amongst the Caspian Zaydis. In the 12th century CE, the centre of gravity of *uṣūl* composition shifted to Yemen, and in *uṣūl* follows many other areas of religious literary composition. This was symbolised by the transfer of large amounts of Zaydi literature from Iran to Yemen, and the invigoration of scholarship in the latter. The Caspi-

19 Madelung, "Zaydiyya," *EI2*.

an was not an intellectual desert, but, compared to Yemen, it shifted into decline. Whilst it was not until the Safavids gained power in Iran (from 1501 onwards) that the Caspian Zaydi communities eventually disappeared, their religious scholarship had declined well before this period, and the production of *uṣūl* reflected this shift as well.

The two texts presented in this volume are editions of manuscript portions from what might be called the “middle” or “postclassical” period of Zaydi *uṣūl*. The first Zaydi text is an edition of the chapter on *qiyās* from *al-Fuṣūl al-lu'lu'īyya* by Ṣārim al-Dīn Ibrāhīm al-Wazīr. The interest here is not the text of the *Fuṣūl* which has been edited numerous times, but the marginal comments (*shurūḥ*, *ḥawāshi*). In these, there is unpublished material which exemplifies the commentary culture in Zaydi *uṣūl* referenced above. The *Fuṣūl* was one of the major Zaydi *mutūn* which attracted extensive commentaries and glosses, and this text, edited and summarised in Chapter 6, typifies the learning and scholarship of the period from al-Wazīr onwards. The second Zaydi text is by a scholar active in the generation after al-Wazīr, namely, Ṣalāḥ b. Aḥmad b. al-Mahdī al-Mu'ayyadī. His *Qanṭarat al-wuṣūl ilā 'ilm al-uṣūl* is a monograph on *uṣūl al-fiqh* written in a highly condensed and referential style. It may have been an attempt to write a base text for commentary. If so, it was not successful, and remains in manuscript form: only one manuscript has been located, and is used in the edition portion presented here. The chapter on *ijmā'* covers not only the standard *uṣūl* discussions around consensus, but also the consensus of the family of the Prophet, the probative force of the opinion of a Companion, and specifically the opinion of the 'Alī (referred to as “the delegated successor” – *al-waṣī*). Together they represent a snapshot of established Zaydi *uṣūl* discussions on topics which are shared with the wider *uṣūl* tradition, and on topics which are distinctively Zaydi. Together they demonstrate the challenges of reading Zaydi *uṣūl*, much of the tradition which remains in manuscripts (many of which are challenging to read), and this may explain why the tradition has not yet been fully explored in the secondary literature on Zaydism to date.

13th Century	<i>Jawharat al-uṣūl wa-tadhkirat al-fuḥūl</i> Aḥmad al-Raṣṣāṣ (d. 656/1258)						
14th Century	7 major commentaries, including an autocommentary, the last being around 1400 CE						
15th Century		<i>Mi'yār al-ʿuqūl fī ʿilm al-uṣūl</i> Aḥmad b. Yahyā, Ibn al-Murtaḍā (d. 840 /1436)					
16th Century		4 major commentaries and a supercommentary to 1055 /1625	<i>Al-Fuṣūl al-lu'lu'yya</i> Ṣārim al-Dīn Ibrahīm al-Wazīr (d. 914/ 1508)	<i>Al-Kāfil</i> Muḥammad b. Yahyā b. Muḥammad Bahrān (d. 957/1550)			
17th Century			5 major commentaries to 1084/1673	10 major commentaries including a versification in the 18th century and a commentary on that versification in mid-18th century	<i>Mirqāt al-uṣūl</i> al-Imām Maṣṣūr bi'llāh al-Qāsim (d. 1029/1620)	<i>Ghāyat al- su'ul fī ʿilm al-uṣūl</i> al-Ḥusayn b. al-Imām al-Qāsim (d. 1050/ 1640)	<i>Mughnī dhawī l-ʿuqūl fī ma'rifat qawā'id al-uṣūl</i> ʿAlī b. Ṣalāḥ al-Ṭabarī (d. 1071/1660)
18th Century					2 major commentaries to mid-17th century	3 commentaries, including an autocommentary plus 2 supercommentaries to mid-18th century.	2 major commentaries to 1191/1777
19th Century		and a versification in 19th century					

Table 1.1 Zaydi *uṣūl* works from the 13th to 19th century

Isma'ili *uṣūl*

Despite a significant growth in the scholarship of Isma'ili studies in recent years, the study of Isma'ili law has not received sustained attention in western scholarship. This is partly because the Nizārīs, the largest branch of Isma'ilīs, abandoned the outward (*ẓāhir*) expressions of religious practices in favour of actualising the esoteric (*bāṭin*) essence of the *sharī'a*. The 23rd hereditary Imam of the Nizārīs, Ḥasan 'alā dhikrihi al-salām (Ḥasan II) proclaimed the advent of the Day of Resurrection (*al-qiyāma*) in 559/1164 and, thus, relieved his followers from the obligation of the customary religious observances.²⁰ It is, therefore, not only conceivable, but also justified, to posit this as the explanation of why legal works or legal studies did not gain popularity in the Nizārī Isma'ili tradition. The fundamental reason, however, that explains the absence of a legal "school", "framework" or "tradition" among the Nizārīs, we argue, is their belief in a living functional Imam across every age and time. The belief in the authority of the Imams is a shared theological principle among the Shi'a, but what makes Nizārī Isma'ilīs distinct from their counterparts (the Twelvers, for instance) is their belief in a living Imam who actively instructs (*ta'līm*) and interprets (*ta'wīl*) the *sharī'a*. A school of law (*madhhab*) would emerge and thrive, one would argue, only if the divinely appointed central authority is absent; the presence of a living functional Imam does not leave room for any alternative legal interpretation and a cadre of legal interpreters.²¹

Musta'li-Ṭayyibīs, the second largest branch of Isma'ilīs, on the other hand, continue to be committed to both *ẓāhir* and *bāṭin* aspects of the *sharī'a*.²² After the concealment (*satr*) of the 21st Imam, Imam Ṭayyib (b. 524/1130), the leadership of the community was delegated to the office of the *dā'i muṭlaq* (a representative of the Imam vested with an unrestricted authority). Each *dā'i* is appointed by his predecessor through unambiguous declaration (*naṣṣ*). Given their belief in the concealment of the Imam, on the one hand, and the continuity of their adherence to the *ẓāhir* of the *sharī'a*, on the other, it is reasonable to assume that there should be a fully operational "legal school" within the Musta'li-Ṭayyibī Isma'ili tradition. The monolithic nature of the legal material produced in the tradition, however, indicates otherwise.²³ The reason appears to be clear; the

20 For a detailed account of the proclamation of the *qiyāma* by Ḥasan II see Daftary, *The Ismā'ilīs: Their History and Doctrines* (Cambridge, 2007), pp. 358–367.

21 It should be noted that the Nizārīs, in recent times, have formed constitutions and personal law boards for the purpose of institutional governance of their constituencies. These laws are not based, or inspired, by the classical and post-classical works of *fiqh* and *uṣūl al-fiqh* and hence do not directly relate to the interest of our current study. For further details see Anderson, "The Isma'ili Khojas of East Africa: A New Constitution and Personal Law for the Community," *Middle Eastern Studies* 1/1 (1964), pp. 21–39; Jamal, "Principles in the development of Ismaili law," *Yearbook of Islamic and Middle Eastern Law* 7/1 (2000), pp. 115–126.

22 On the Nizārī-Musta'li schism see the introduction of Chapter 8 in this volume.

23 Melchert outlines several criteria that help us understand the formation of Sunni schools of law (*madhāhib*, sing. *madhhab*) in the third/ninth and fourth/tenth centuries. The identity markers of any classical school of law, he asserts, are: it should have a local chief; the standard texts of a school must have attracted commentaries; there should be, within the tradition, explicit distinction between the established and emerging scholars; and it should have produced biographical dictionary of the adherents of the school. See Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden, 1997), pp. 60, 87 and *passim*. None of these identity markers are traced in the Isma'ili legal tradition.

dā'ī muṭlaq assumes precisely the same authority and role as was bestowed upon the Imams. The *dā'ī*, in the period of concealment (*dawr al-satr*), Musta'li-Ṭayyibīs postulate, is directed by the divine guidance of the Imam and, therefore, possesses "unrestricted authority" (and hence the term *muṭlaq*).²⁴ In other words, a *dā'ī* is not a regular *mujtahid* who exercises personal juristic reasoning in order to arrive at a legal conclusion, but rather a vicegerent of the hidden Imam to whom obedience is demanded. Notwithstanding the ambiguity surrounding the Imam-*dā'ī* relationship, it is pertinent to examine these questions: How do the *dā'īs* respond to contemporary legal issues that have no precedence in early legal texts? Which interpretive techniques do they use to draw legal conclusions? What is the status of early works of *fiqh*, predominantly from the Fatimid period, in the Musta'li-Ṭayyibī legal framework? In what follows, we attempt to examine these questions by offering a brief survey of legal writings of the Musta'li-Ṭayyibī Isma'ili tradition.²⁵ For the purpose of this introduction, we divide the origins and development of Isma'ili legal discourse into three periods.

1. The Fatimid period

The first period consists of legal works composed in the Fatimid era (297–567/909–1171). This period is rightly considered the pinnacle of Isma'ili legal writings. Al-Qāḍī al-Nu'mān (d. 363/974), under the patronage of the Fatimid Caliph-Imams, produced scores of single-authored legal works for judges, governors and bureaucrats in the burgeoning Isma'ili state. Fyzee,²⁶ Lokhandawalla,²⁷ Madelung,²⁸ Poonawala²⁹ among others³⁰ have studied various aspects of Isma'ili legal writings of this period. Fyzee and Lokhandawalla are credited with being pioneering scholars in the field of Isma'ili legal theory. Madelung's study, on the other hand, focused on the

24 For a detailed discussion on the office of *dā'ī muṭlaq* see Hamdani, "The Dā'ī Ḥātim ibn Ibrāhīm al-Ḥāmīdī (d. 596 H./ 1199 A.D.) and His Book *Tuḥfat al-qulūb*," *Oriens* 23/24 (1974), pp. 275–279.

25 Two concessions are made in this section. First, Druze law which merits its own independent study is not included in this survey. For the study of Druze law see Anderson, "The Personal Law of the Druze Community," *Die Welt Des Islams* 2/1 (1952), pp. 1–9; Layish, "Islam as a Source of Law in the Druze Religious Courts," *Israel Law Review* 14/1 (1979), pp. 13–30; and Halawi, "Les Druzes dans les chroniques arabes médiévales: Une narration éclatée," *SI* 104/105 (2007), pp. 103–132. Second, works related to Isma'ili *ta'wīl* are also discounted in this introduction.

26 Fyzee, "Aspects of Fatimid Law," *SI* 31 (1970), pp. 81–91; Fyzee, "Shi'ī Legal Theories," in *Law in the Middle East* (Washington, 1955), v. 1, pp. 113–132.

27 Lokhandawalla, *The Origins of Isma'ili Law* (Oxford, 1951).

28 Madelung, "The Sources of Isma'ili Law," *JNES* 35 (1976), pp. 29–40.

29 Poonawala, "al-Qāḍī al-Nu'mān and Isma'ili Jurisprudence," in *The Sound Traditions: Studies in Ismaili Texts and Thought* (Leiden, 2021), pp. 467–492; Poonawala, "The Evolution of al-Qāḍī al-Nu'mān's Theory of Ismaili Jurisprudence as Reflected in the Chronology of his Works on Jurisprudence," in *The Sound Traditions: Studies in Ismaili Texts and Thought* (Leiden, 2021), pp. 493–554.

30 Cilaro examines a legal treatise attributed to al-Qāḍī al-Nu'mān entitled *Minhāj al-farā'id*. See Cilaro, "Ismaili Jurisprudence: A Reaffirmation of Its Early History," *Arabica* 62 (2015), pp. 395–403; Cilaro (ed. & tr.), *The Early History of Ismaili Jurisprudence: Law under the Fatimids*, A critical edition of the Arabic text and English translation of al-Qāḍī al-Nu'mān's *Minhāj al-farā'id* (London, 2012). Stewart's scholarly translation of the *Ikhtilāf uṣūl al-madhāhib* is also a welcoming addition to the field. See Stewart (tr.), *Disagreements of the Jurists: A Manual of Islamic Legal Theory* (New York, 2015).

sources of Isma'ili law. In his study on the sources of Isma'ili law, Madelung concluded that the Isma'ili law (as reflected in al-Qāḍī al-Nu'mān's legal work *al-Īdāh*) is essentially a compromise between Twelver and Zaydi law.³¹ In contrast, Poonawala argues that we can speak of an 'independent' Isma'ili law system initiated and developed by al-Qāḍī al-Nu'mān which, though, did not continue after his death.³²

Among various legal compositions of al-Qāḍī al-Nu'mān, the *Ikhtilāf uṣūl al-madhāhib* is described as containing 'the most important extant discussions of Islamic legal theory from the fourth/tenth century'.³³ This work is essentially a refutation of Sunni legal theory, but in the process al-Qāḍī al-Nu'mān articulates the Isma'ili position on the theory of legal interpretation. The entire work revolves around one central theme: only Imams can interpret God's revealed law. The Sunnis, al-Qāḍī al-Nu'mān argues, had to take recourse to different tools to interpret laws because they rejected the authority of the rightful Imams. He accuses Sunnis of following whim and exercising personal judgments by applying analogy (*qiyās*), preference (*istihsān*), speculative reasoning (*naẓar*), opinion (*ra'y*), inference (*istidlāl*), and consensus (*ijmā'*) in their legal interpretations. These tools bear different titles, he professes, but they yield the same result i.e. conjecture. It is for this reason that at the very outset of the *Ikhtilāf*, al-Qāḍī al-Nu'mān outlines what he considers to be the authentic sources of law. He cites his letter of appointment by al-Mu'izz in which the Caliph-Imam had instructed him:

In all your decisions and judgments, you should follow the Book of God...If you neither find in the Qur'an any text [concerning a problem] nor any decision in the *sunna*...search it in the creeds of the pious, pure and well guided Imams...If something appears obscure and hence confusing or if dubious and hence baffling, refer it to Amīr al-Mu'minīn so that he may guide you to the proper decision on it.³⁴

He also wrote several other independent treatises that reportedly contained a sustained criticism of the legal theories of Abū Ḥanifa, Mālik, al-Shāfi'i, Ibn Surayj, al-'Utbī among few other jurists of the 2nd/8th and 3rd/9th centuries.³⁵ None of these treatises are extant. As stated earlier, the primary objective of these works is refutation – Isma'ili legal theory is only mentioned in passing. A more nuanced approach to investigate Isma'ili legal hermeneutics, we propose, is examining al-Qāḍī al-Nu'mān's first legal composition, namely *al-Īdāh*. It is an analytical work of *fiqh* from which Isma'ili legal theory could be worked out. In *al-Īdāh*, al-Qāḍī al-Nu'mān refers to the praxis (*'amal*) as a supplementary argument;³⁶ he gives preponderance to one set of reports over the other;³⁷ he analyses the linguistic expressions of apparent speeches (*ẓawāhir*, sing. *ẓāhir*) used in

31 Madelung, "The Sources of Isma'ili Law," p. 32.

32 Poonawala, "al-Qāḍī al-Nu'mān and Isma'ili Jurisprudence," p. 492.

33 Stewart, *Disagreements of the Jurists*, p. ix.

34 The translation is extracted from al-Qāḍī al-Nu'mān, *Kitāb ikhtilāf uṣūl al-madhāhib* (Simla, 1972), pp. 55–56 (introduction). For a different edition and translation see Stewart, *Disagreements of the Jurists*, pp. 42–43.

35 Ibn Khallikān, *Wafayāt al-a'yān* (Beirut, 1968), v. 5, p. 416; Poonawala, "al-Qāḍī al-Nu'mān and Isma'ili Jurisprudence," p. 480, footnote n. 46.

36 Al-Qāḍī al-Nu'mān, *al-Īdāh* (Beirut, 2007), pp. 75, 86, 88, 122 and passim.

37 Al-Qāḍī al-Nu'mān, *al-Īdāh*, pp. 108–109.

the reports;³⁸ he cites customary practice of the people (*ẓāhir umūr al-nās*);³⁹ he alludes to the consensus of the transmitters of the descendants of the Prophet (*ijmā' al-ruwāt 'an Ahl al-bayt*).⁴⁰ These are among the various legal tools and techniques that are of direct interest to the field of *uṣūl al-fiqh*.⁴¹ *Al-Īdāh*, the only analytical legal work of al-Qāḍī al-Nu'mān, has only partially survived and therefore any attempt to present a complete portrayal of Isma'ili *uṣūl* of this period is severely limited.

Among the legal writings of this period, particular mention should be made of Ibn Killis's (d. 380/991) treatise, *al-Risāla al-wazīriyya*. This Fatimid *wazīr* of Jewish origin is credited with a legal composition based on the rulings of Caliph-Imams al-Mu'izz (r. 341–365/953–975) and al-'Aziz (r. 344–386/975–996) with whom he had worked closely. Within the Isma'ili tradition, this non-extant work is remembered with different titles: *al-Risāla al-wazīriyya*, *Muṣannaf al-wazīr*, *Mukhtaṣar al-muṣannaf* and *Mukhtaṣar al-wazīr*. Ibn Killis's treatise was ranked among the most authoritative texts next only to the *Da'ā'im al-islām*.⁴²

2. The Yemeni period

The second phase of the Isma'ili legal tradition represents the period in which Isma'ilis not only split into Nizārīs and Musta'lis, but each of these two factions witnessed crisis in their respective traditions that permanently changed the legal trajectory of their communities. In the third decade of the 6th/12th century, the 21st Musta'li-Ṭayyibī Imam went into concealment leaving the social and religious affairs of the community in the hands of *dā'i muṭlaqs*. Later in the sixth decade of the same century in Alamut of Iran, the 23rd Nizārī Imam abrogated the *ẓāhiri* aspects of the *sharī'a*. These two events inevitably changed the development of the Isma'ili legal tradition. The Isma'ili legal tradition, in the second period, therefore, is represented by the legal writings of the Musta'li-Ṭayyibī *dā'i muṭlaqs* of Yemen.

Not much is known about the legal writings of the *dā'i muṭlaqs* of Yemen. Poonawala has listed two factors that lead to the absence of legal compositions in the Musta'li-Ṭayyibī legal tradition of this period. First, al-Qāḍī al-Nu'mān's *Da'ā'im al-islām* was an 'enduing work' that met 'the approval of the fourth Fatimid Caliph-Imam al-Mu'izz li-Dīn Allāh' leaving no scope for other works to emerge or develop. Second, the concealment of al-Ṭayyib rendered 'modifying any aspect of the law' a challenging task.⁴³ These two factors, Poonawala argues, explain why legal discussions failed to receive much attention in the ensuing years. Qutbuddin, on the other hand,

38 Al-Qāḍī al-Nu'mān, *al-Īdāh*, p. 42.

39 Al-Qāḍī al-Nu'mān, *al-Īdāh*, p. 71.

40 Al-Qāḍī al-Nu'mān, *al-Īdāh*, pp. 28, 36, 73 and passim.

41 It should be noted that Ibn Ḥajar al-'Asqalānī uses the phrase school of Isma'ilis (*madhhab al-Isma'iliyya*). He reports that Muḥammad b. Nu'mān was instructed to issue legal verdicts based on the school of Isma'ilis ('*alā madhhab al-Isma'iliyya*) and not the school of Shāfi'ites (*lā bi-madhhab al-Shāfi'i*). See Ibn Ḥajar al-'Asqalānī, *Raf' al-īṣr 'an quḍāt Miṣr* (Cairo, 1418/1998), p. 282. The word *madhhab* does not appear to have been used in its strict sense as defined by Melchert (see n. 23).

42 Al-Maqrīzī, *Kitāb al-mawā'iz wa-l-i'tibār fī dhikr al-khiṭaṭ wa-l-āthār* (London, 2002–04), v. 2, p. 192; Idrīs 'Imād al-Dīn, *Uyūn al-akhbār* (Amman, 2007), v. 6, p. 232.

43 See Poonawala, "The Evolution of al-Qāḍī al-Nu'mān's Theory of Ismaili Jurisprudence as Reflected in the Chronology of his Works on Jurisprudence," pp. 493–495.

asserts that the *Da'ā'im al-islām* is 'supplemented by several other works by Fāṭimid-Ṭayyibī scholars' in the Musta'li-Ṭayyibī legal tradition.⁴⁴ Qutbuddin, however, does not offer list of these 'several works', nor any details of their 'Fāṭimid-Ṭayyibī' authors.

From the little we know about the legal discussions of this period, it appears that law and legal authority was a regular topic of debate among the Musta'li-Ṭayyibī Isma'ilis of Yemen. The 19th *dā'i muṭlaq* Idrīs 'Imād al-Dīn (d. 872/1468), for instance, issued the verdict that the legal opinions stated in the *Da'ā'im al-islām* of al-Qāḍī al-Nu'mān take precedence over those recorded in the *Muṣannaf al-wazīr* of Ibn Killis when they contradict one another, no matter how minor (*mā kāna fīhi shay' yasīr yunāqid...fa-l-rujū' fīhi ilā...Kitāb Da'ā'im*).⁴⁵ He goes further by stating that even the *Mukhtaṣar al-āthār* of al-Qāḍī al-Nu'mān should be preferred over the *Muṣannaf al-wazīr*. Idrīs' remedy for the issue of contradiction between early texts indicates the existence of a reasonably vibrant legal tradition among the Musta'li-Ṭayyibī scholars of Yemen (and also in western India where they had a strong followership among the Bohras) in which early legal texts were read and analysed, and solutions were sought in areas of disagreement.

Among legal compositions of this period that bear close resemblance to works of "legal theory" (*uṣūl al-fiqh*) is 'Alī b. Muḥammad b. al-Walīd's (d. 612/1215) *Mukhtaṣar al-uṣūl*, a section of which is edited and commented upon in Chapter 8 of this volume. In the *Mukhtaṣar*, 'Alī b. Muḥammad refutes what he sees as the dubious and flawed theories of legal interpretation adopted by the Sunnis, highlighting the importance of obtaining religious guidance from a divinely appointed central authority (i. e. Imam and by extension the *dā'is* in the period of concealment). In doing so, he argues for the superiority of Isma'ili tradition over other Islamic legal and doctrinal schools.

There is also another genre of legal works from this period that follow the style of "question and answer" (*al-su'āl wa-l-jawāb*). These works record the correspondence between Yemeni *dā'is* and their Indian followers on various legal issues, from ritual ablution to matters concerning financial transactions, marriage and capital punishment – issues which are typical of any classical compendium of Islamic law. They are referred to as *al-masā'il* or *Kitāb al-su'āl wa-l-jawāb*. *Al-Masā'il al-Sham'uniyya* (also known as *Kitāb al-su'āl wa-l-jawāb*), for instance, is a collection of responses by the *dā'i muṭlaq* Badr al-Dīn Ḥasan b. Idrīs (d. 918/1512) to the questions raised by his Indian associate Sham'un b. Aḥmad al-Ghūrī al-Isma'ili in the year 890/1485–86.⁴⁶ The *dā'i*, in these exchanges, has kept the responses extremely brief and often quotes early works of law to support his position.⁴⁷ Though the majority of the questions concern the daily religious obligations of the laity, occasionally technical questions are also raised. In one correspondence, for instance, Sham'un b. Aḥmad seeks explanation in reference to the command of washing the face and laving the eyes (*ishrāb al-aynayn*) during ablution as instructed in the *Da'ā'im al-islām*: whether closing the eyes (*taghammuḍ*) would render the ablution defective? The *dā'i* replied that

44 Qutbuddin, "Bohras," EI3.

45 Idrīs, *Uyūn al-akhbār*, v. 2, p. 232. It should be noted that Ibn Killis and 'Alī b. Nu'mān (al-Qāḍī al-Nu'mān's son) were rivals. Idrīs 'Imād al-Dīn's attempt to resolve the contradictions between *Da'ā'im* and *Mukhtaṣar* should be read in the context of this rivalry. See Ibn Ḥajar al-Asqalānī, *Raf' al-iṣr 'an quḍāt Miṣr* (Cairo, 1418/1998), pp. 283 (no. 147), 472–473 (no. 254).

46 Poonawala, *Biobibliography of Isma'ili Literature* (Malibu, 1977), p. 177.

47 For instance, *Kitāb al-ikhbār/al-akhbār* is cited. See Sham'un b. Aḥmad, *al-Masā'il al-Sham'uniyya*, MS Alavi Bohra Collection, p. 3.

it is recommended to lave the eyes, but the obligation is fulfilled even without performing it.⁴⁸ These correspondences not only show strong ties of the Bohras with their Yemenī *dā'īs*, but also offer glimpses into their socio-religious life in western India.⁴⁹ In another instance, Sham'ūn b. Aḥmad asks: "What is your opinion concerning parting the hair on both the sides and not leaving them hanging down on the nape as customarily practised by Indian men and women?" In compliance to the then Indian culture, the *dā'ī* responded: "Hair should be parted in two sides from the forehead to the nape and this practice (of dressing hair) should not be avoided intentionally."⁵⁰

Two other works from this period that belong to the genre of *al-masā'il/al-su'āl wa-l-jawāb* are Aminjī b. Jalāl's (d. 1010/1602) *Kitāb al-su'āl wa-l-jawāb/Masā'il Aminjī b. Jalāl* and *Kitāb al-ḥawāshī*. Both texts are very similar to *al-Masā'il al-Sham'ūniyya* in style, structure and content. Aminjī was an eminent jurist from India and his writings are still considered among the most authoritative sources on law and legal authority.⁵¹

The important question for us here is the methodology adopted by the *dā'īs* in responding to the legal issues raised by their followers. Given the nature of these *masā'il* works that primarily addressed the queries of the laity, it is unreasonable to expect any sophisticated scholarly material. They have simply reproduced, after simplification, the material already available in the early works of *fiqh* which are often cited in the responses.⁵² The legal positions laid out in early texts are considered authoritative and, therefore, remain uncontested. The opinions of the living *dā'ī* and his interpretations of the early texts are also considered authoritative and therefore, the *dā'ī* is not required, or even expected, to offer any juristic reasoning or exegetical solutions. The titles with which the *dā'īs* are addressed indicate the spiritual hegemony offered to them by their followers. A few of these phrases merit mention: O! the destroyer of the strength of misguided and corrupt people (*yā qāṣim ṣuḥūr ahl al-ghawāya wa-l-fitan*),⁵³ O! the one whom God has graced us with the opportunity of benefiting from his vast knowledge (*yā man yasurru Allāh 'alaynā al-khawḍ fi baḥr 'ilmihi*),⁵⁴ O! the one whom God – the exalted – has made him his door of grace to which those who seek refuge from the darkness can seek shelter (*yā man ja'alahū Allāh ta'ālā bāb raḥmatihī yaltajī'ū ilayhi man huwa lil-takhalluṣ min al-'ālam al-ḥulmānī murīd*)⁵⁵ among many similar phrases that appear at the very beginning of each question. Such forms of address demonstrate the all encompassing authority of the *dā'ī*.

48 *Al-Masā'il al-Sham'ūniyya*, p. 153. Also see al-Qāḍī al-Nu'mān, *Da'ā'im al-Islām* (Cairo, 1951–61), v. 1, p. 107 and al-Qāḍī al-Nu'mān, *The Pillars of Islam* (New Delhi, 2001), v. 1, p. 133.

49 *Al-Masā'il al-Sham'ūniyya*, pp. 8, 156–157.

50 *Al-Masā'il al-Sham'ūniyya*, pp. 8–9.

51 He is also credited with two others works on law: *Ḥisāb al-mawārith* (a treatise on Islamic laws of inheritance) and *Sharḥ al-muntakhaba al-manẓūma* (a commentary on *al-Urjūza al-muntakhaba* of al-Qāḍī al-Nu'mān). See Poonawala, *Biobibliography of Ismā'īlī Literature*, pp. 185–186.

52 Aminjī b. Jalāl, *Kitāb al-ḥawāshī* (Surat, 1428–29/2007–08). The author refers to *al-Mukhtaṣar al-muṣannaf* (v. 1, pp. 8, 10, 24 and passim), *al-Īqāh* (v. 1, p. 9, 252 and passim), *Mukhtaṣar al-āthār* (v. 1, pp. 145, 162 and passim), *al-Maṭlab fi fiqh al-madḥhab 'an al-a'immat al-tāhirin* (v. 2, pp. 6, 60, 75, 107) among many other titles. This transcript edition (for Bohra seminary students and scholars) contains excellent indices at the end of each volume.

53 *Al-Masā'il al-Sham'ūniyya*, p. 1.

54 *Al-Masā'il al-Sham'ūniyya*, pp. 2–3.

55 *Al-Masā'il al-Sham'ūniyya*, pp. 153–154.

There are several other works of law and legal authority written in this period.⁵⁶ None of them, except for the *Mukhtaṣar al-uṣūl* examined in Chapter 8, to the best of our knowledge, has been critically edited. It is our hope that this introductory survey will generate some interest in the study of Musta'li-Ṭayyibi legal literary activities of this period and their role and impact on wider Islamic legal tradition.

3. The Indian subcontinent period

The third period of Isma'ili legal tradition comprises juristic literature composed in the Indian subcontinent. In the mid-10th/16th century, the office of *dā'ī muṭlaq* permanently moved from Yemen to India where it had its largest followership in the Bohra community. The *dā'īs*, hereafter, were of Indian origin. This period also witnessed several schisms within the community. In 1591, the Bohras split into Dāwūdīs and Sulaymānīs over the successorship of the 26th *dā'ī* Dāwūd b. 'Ajabshāh (d. 999/1591). In less than three decades, 'Alawīs separated from the Dāwūdīs.⁵⁷ This wider Bohra community kept splitting, mainly over the issue of *dā'ī*ship, in the subsequent years. As a result of these conflicts, the literary output of the tradition further dwindled.

Notwithstanding this turmoil, several legal works were composed in this period. The 39th Dawūdī *dā'ī* Ibrāhīm Wajih al-Dīn (d. 1168/1754) composed *al-Muntakhaba al-Wajhiyya* which contains excerpts from early works of *fiqh*.⁵⁸ In the same period, Luqmānjī b. Ḥabiballāh (d. 1173/1760), known as "Nu'mān al-waqt" (i.e. al-Qāḍī al-Nu'mān of his time), composed a legal treatise elucidating the meaning of sighting (*ru'ya*) of the moon to determine the beginning of the month mentioned in reports of the Imams. In the *Risālat Wajhiyya fi tartīb al-dīn wa-tabyīn farḍ shahr Ramaḍān*, he concludes that the reports do not mean to suggest sighting with the eyes (*ru'yat al-ʿayn*), rather ascertaining through science and knowledge (*ru'yat al-ʿilm*). He also composed *Mukhtaṣar Wajhiyya fi l-ṭā'a wa-l-qabūl lil-amr wa-l-nahy* that concerns with submitting to

56 Poonawala, *Biobibliography of Ismā'ili Literature*, pp. 146 (*al-masā'il wa-l-ajwiba fi l-fiqh*, a section of *Majmū' al-tarbiya* of al-Ḥārithī, d. 584/1188), 173 (*Risālat al-bayān limā wajaba min ma'rifat al-ṣalāh fi niṣf shahr Rajab al-aṣabb* by Idrīs 'Imād al-Dīn, d. 872/1468), 174 (*Risālat mudhīḍat al-buhtān wa-mūḍiḥat al-ḥaqq fi ṣawm shahr Ramaḍān* by Idrīs 'Imād al-Dīn), 174 (*Risālat idāh al-a'lām wa-ibānat al-ḥujja (aw al-hidāya) fi kamāl 'iddat al-ṣiyām fi anna al-ṣiyām bi-l-ḥisāb lā bi-l-ru'ya wa-anna shahrahu thalāthūn yawm lā yanquṣu min 'iddatihi abada* by Idrīs 'Imād al-Dīn), 175 (*Risālat fi hilāl al-ṣawm*, ascribed to Idrīs 'Imād al-Dīn). There are several other legal works whose authors remain unknown which also means that they might belong to the third period. See Poonawala, *Biobibliography of Ismā'ili Literature*, pp. 322 (*Risālat al-bayān fi tamām shahr Ramaḍān*), 330 (*Masā'il al-fiqh min Mukhtaṣar al-muṣannaf*), 335 (*Kitāb al-su'āl wa-l-jawāb (fi l-fiqh) li-mashāyikh al-Hind ma'a al-ḥawāshī min kitāb al-Qāḍī al-Nu'mān*), 336 (*Majmū' al-fiqh*), 337 (*Masā'il fi l-fiqh*), 337 (*Masā'il lil-nikāḥ al-Zayniyya*), 337 (*Risālat fi ithbāt wujūb al-mash' alā rijlayn wa-fi jam' bayn ṣalātay al-ḥuḥr wa-l-ʿaṣr wa-fimā jā'a min al-i'tirāḍāt fi l-ṣiyām bi-hukm al-ḥisāb 'an ba'd al-ṣāliḥīn*), 337 (*Tis'ūn mas'ala fi l-nikāḥ*), 342 (*Risālat fi l-fiqh*), 342 (*Risālat fi muṭābiqat al-amr 'alā al-sharī'a wa-radd mā lam yu'lam min dhālika ilā ṣāhib al-ṣanā'a al-rafi'a*), 342 (*Risālat fi hilāl al-ṣawm*), 342 (*al-Risāla al-mukhtaṣara al-zāhira fi ta'kid a'māl al-sharī'a al-zāhira*), 344 (*Kitāb al-zakāt*), 346 (*Manāṣik al-ḥajj*) and several other treatises that contain legal and non-legal content.

57 Daftary, *The Ismā'ilis: Their History and Doctrines*, pp. 276–300.

58 Poonawala, *Biobibliography of Ismā'ili Literature*, p. 200.

the commands and prohibitions of the *sharī'a* and another treatise on *zakat* entitled *Majmū' Wajhī fī adā' al-zakāt*.⁵⁹

The *masā'il* works continued to be written in this period too. The two important collections of this period are *al-Masā'il al-Sayfiyya* and *al-Masā'il al-Zayniyya* that contain responses of the 43rd Dāwūdī *dā'i* 'Abd 'Alī Sayf al-Dīn (d. 1232/1817) to the questions put by Ibrāhīm al-Sayfī (d. 1236/1821) and Ṭayyib Zayn al-Dīn (d. 1252/1837) respectively.⁶⁰ There are several other legal treatises, manuals and compendia written in this period for the use of Bohra community.⁶¹

As expected, there are no independent works of legal theory written in this period. The reason appears to be obvious. The status of *dā'i* was now elevated to *quasi*-infallible (*kal-ma'ṣūm*), claiming the exact same authority and obedience that had been attributed to (and demanded from) the Imams.⁶² There was no room for alternative legal interpretations, and so no need for independent legal debate and discussion. No one could challenge the *dā'i*'s verdicts since they are not text-bound. The *dā'i* is not a *muftī* or a *mujtahid* as in other legal traditions. His pronouncements are not fatwas. The role of the scholars, in the seminary, is to disseminate the teachings of the *dā'i*. They should not engage in critical assessment of the *dā'i*'s positions. This rather rigid model of Musta'li-Ṭayyibi legal tradition has its own obvious shortcomings, particularly the lack of diversity, but it has, conversely, resulted in producing a fairly consistent and organised legal system from the Fatimid period up until now.

The survey of Musta'li-Ṭayyibi legal writings presented in this section helps us understand the developmental history of the Isma'ili legal tradition. The legal writings of the first period revolved around defining the contours of Shi'i (against Sunni) legal tradition; the activities in the latter two periods aimed at catering to the religious needs of the believers. The *dā'is*, in the second and third period, enjoyed the same status and authority which the Imam claimed in the first period. We have also suggested that there is a telling absence of writings concerning legal theory in all the three periods. This is a peculiar feature that characterises the Isma'ili legal tradition more broadly. In an Isma'ili legal framework, the sole authority for interpreting the *sharī'a* is bestowed upon the Imams (when present) and *dā'i muṭlaqs* (in the absence of Imams). This leaves no scope for others (students and scholars alike) to engage in any kind of juristic reasoning.

The development, or lack thereof, of a legal school within a Shi'i tradition is, thus, directly proportional to the involvement, or lack thereof, of the Imam in the daily affairs of the community. The hidden twelfth Imam of the Twelvers, for instance, is believed to have suspended any direct involvement in guiding his followers, leaving them to derive laws from the available source-

59 Poonawala, *Biobibliography of Ismā'ili Literature*, p. 202.

60 Poonawala, *Biobibliography of Ismā'ili Literature*, pp. 213, 218.

61 Poonawala, *Biobibliography of Ismā'ili Literature*, pp. 210 (*Masā'il Sayfī fī l-fiqh* by Yūsuf Najm al-Dīn, d. 1213/1798), 206 (*al-Muntakhab fī l-fiqh* by Ismā'il b. 'Abd al-Rasūl al-Majdū', d. 1183–84/1769–70), 214–215 (*al-Fatāwā al-Sayfiyya* and *Kitāb al-najāh fī ma'rifat aḥkām al-nikāh* by Ibrāhīm b. al-Shaykh Jiwābhā'i b. al-Shaykh Luqmānī al-Sayfī, d. 1236/1821), 229 (*Sullam al-wuṣūl fī ma'rifat al-furū' wa-l-uṣūl* by Muḥammad 'Alī b. Mullā Jiwābhā'i, d. 1315–16/1897–99), 236 (*Kanz al-fiqh* in Lisān al-da'wat dialect by Mullā Qurbān Ḥusayn Poonawala, d. 1372/1952), 238 (*al-Risālat al-Ramaḍāniyya* by Ṭāhir Sayf al-Dīn, d. 1385/1966), 238 (*al-Masā'il allati sa'ala 'anhā al-Shaykh al-Fāḍil Ḥamzabāhā'i b. al-Shaykh Yūsuf 'Alī wa-ajwibatuhā allati ajābahā... Ṭāhir Sayf al-Dīn* by Ṭāhir Sayf al-Dīn), 241 (*Tuḥfat al-masā'il* in Lisān al-da'wat dialect by Miyān Ṣāhib 'Abd al-Qādir).

62 Blank, *Mullahs on the Mainframe: Islam and Modernity Among the Daudi Bohras* (Chicago, 2001), p. 123.

es, which resulted in the emergence of a thriving legal tradition spearheaded by the jurists (Chapters 1–5). Zaydis, on the other hand, do not restrict imamate to one single person in a given time; there could be several Imams at the same time and each of them could establish his own school of law. Moreover, Zaydi Imams are not expected to possess divinely inspired knowledge.⁶³ This particular imamology of Zaydis has also resulted in the emergence and development of a rigorous legal tradition (Chapters 6 and 7). Contrary to the Twelvers and Zaydis, Isma'ilis never felt the need to extrapolate laws from the sources since the sole authority of legal interpretation lies with an unbroken chain of living functional Imams in the Nizārī tradition and *dā'i muṭlaqs* in the Musta'li-Ṭayyibī tradition.

Twelver *uṣūl*

Twelver Shi'i legal developments before the composition of works of legal theory (and even before becoming "Twelver" following the Major Occultation of the Twelfth Imam) exhibits an ambivalence towards theoretical thinking. There is, on the one hand, a deep suspicion of the processes of legal theory generally, and the discipline of *uṣūl al-fiqh* specifically. This suspicion was shared, to an extent, with the Isma'ili tradition (see the section above on "Isma'ili *uṣūl*") and could be traced to the position of the Imam as a legal authority: theoretically, the Imam's legal ruling requires no specific justificatory proof. Its authority comes from the personal authority of the Imam himself. This is reflected in some reports attributed to the Imams where there is an explicit rejection of elements of the emerging legal theoretical discourse such as *ra'y*, *qiyās* and *ijtihād*. This is accompanied by a fearsome advocacy of "certain" knowledge (*ilm*) as the only legitimate currency for religious belief generally, and legal investigation in particular. These sentiments are found in reports attributed to the Imams and constitute our earliest sources of Twelver Shi'i legal thinking. So, for example, in a letter (or treatise, *risāla*) which Imām Ja'far al-Ṣādiq (d.148/765) supposedly wrote to the "partisans of opinion and analogy (*aṣḥāb al-ra'y wa-l-qiyās*)", he condemns their practices:

They say: there is only what our intellects acquire and our minds come to know... [but] if God was approved with their *ijtihād* and their opinion forming (*irtiyā'*) in what they claim on this matter, then God would not have sent messengers to them to distinguish what was amongst them, and rebuke their characterisation here. We can straightforwardly deduce that God approved of not this but something else by the fact that he sent messengers with valid, valuable commands, and with a warning to guard against invalid, problematic commands. He made [the messengers] his gateways, his path, his guides, so that they could thereby inform [the people] of matters which are hidden from *ra'y* and *qiyās*.⁶⁴

Of course, the precise referent of the terms *ijtihād*, *qiyās* and *ra'y* in such reports is a point of debate in the later tradition. Given that *ijtihād* becomes such a central feature of later Twelver Shi'i legal theory, the negative references to *ijtihād* by the Imams was a challenge. This was overcome by asserting that the sort of *ijtihād* condemned by the Imams was actually *ra'y* and *qiyās*; it was not the technical procedure of exerting effort to discover an opinion about a legal ruling that is so carefully explored in the writings of al-Muḥaqqiq al-Ḥilli, al-ʿAllāma al-Ḥilli and subsequent jurists (on which, see below). The explanation is designed to prevent a rupture in the tradition

63 Haider, *Shi'i Islam: An Introduction* (Cambridge, 2014), p. 112.

64 Al-Barqī, *al-Maḥāsīn* (Qum, 1371/1951), v. 1, p. 209.

between the statements of the Imams and the intellectual production of the later jurists.⁶⁵ As we shall see, it was only partially successful: the discontinuity was noticed and exploited some centuries later by jurists attached to the Akhbārī school. The heated discussion around the legitimacy of *ijtihād* amongst later jurists can prevent a clear understanding of the beginnings of legal theoretical ideas within the Twelver Shi'i tradition, and their incorporation into works which are recognisably of the *uṣūl al-fiqh* genre.

In some of the recorded Imams' statements (*akhbār*), there is (at least) an apparent rejection of certain deductive processes associated with the emerging discipline of *uṣūl al-fiqh*. This is not to say that there is no theoretical content within the legal *akhbār* found in Twelver Shi'i collections. Indeed, the process of derivation of rulings from fundamental rules or texts appears to be sanctioned by statements such as:

From Imam Ja'far al-Šādiq: We are merely required to introduce to you the *uṣūl* – you are duty-bound to apply [them] (*tafarra'u*).⁶⁶

Furthermore, there are *akhbār* in which the Imam himself reveals the legal grounds on which he makes a particular ruling. For example:

‘Abd al-A‘lā said: I said to Abū ‘Abdallāh (Ja'far al-Šādiq), “I tripped and broke the nail of my finger, and there is a bandage on it – how should I do the ritual ablution?” He replied, “This, and cases like this, are covered in the Book of God when he says, “In religion, hardship is not to be placed upon you.”⁶⁷, so wipe over it.”⁶⁸

Reports such as these imply that there is a process of legal justification for the Imam's rulings. That is, the recorded rulings of the Imam are not simply his diktat to be obeyed without question or reason. Rather, there is a logic or rationale to the rulings, and as such, a process of justification for specific rulings is revealed by the Imam. In this case, the hardship caused by taking the broken nail too seriously is deemed excessive, and therefore, implied within the justification is a process of deduction. Since the legal rulings emanating from the Imams are revealed as based on proofs, new rulings (potentially) can be derived when they are also based on a proof. This is how the Imams' *akhbār* – which appear to encourage the deduction of specific legal rulings (*furū'*) from fundamental principles or cases (*uṣūl*) – are understood. A variant (both in the wording and the attributed Imam) to the above cited report states:

From Imam al-Riḍā: We are required to deliver the *uṣūl* – you must perform *tafrī'*.⁶⁹

65 Calder, “Doubt and Prerogative: The Emergence of an Imāmi Shi'i Theory of Ijtihād,” pp. 57–78.

66 This report is cited by Ibn Idris al-Ḥillī, *al-Sarā'ir* (Qum, 1410/1989), v. 3, p. 575. It could be argued that these reports in a relatively late source are likely to reflect later debates rather than earlier development.

67 Qur'an 22:78.

68 Al-Ṭūsī, *Tahdhīb al-aḥkām* (Tehran, 1407/1986), v. 1, p. 363.

69 Ibn Idris al-Ḥillī, *al-Sarā'ir*, v. 3, p. 575. See, also, n. 66.

Here the use of the term *tafri'* – which came to mean the technical legal derivation from fundamental cases (*uṣūl*) to dependent cases (*furū'*) – is significant. The root-branch metaphor was, of course, well-developed in discussions around Islamic legal theory, and was particularly developed in the theory of *qiyās*. Here, with the rejection of *qiyās*, the use of *tafri'* perhaps indicates a process of deduction of legal rulings, and their application to specific cases – which preserves the epistemological integrity of the Imams' ruling. The report, supposedly recording a statement during the Imams' presence, foreshadows the situation the Twelver Shi'a will face when the Imam disappears. The emphasis on *ilm*, and the rejection of *ra'y* and *qiyās* (aka *ijtihād*) did not, then, result in a total rejection of the mechanisms of legal theory. It did though feed into the development of a distinctive brand of *uṣūl* writings from Twelver Shi'i jurists, at least in the early stages.

Twelver Shi'i literary explorations of legal theory topics are mentioned by biobibliographers, including Hishām b. al-Ḥakam (d.179/795) on *alfāz* (speech acts) and Ḥasan b. Mūsā al-Nawbakhti (d. c. 312/922) on *al-khuṣūs wa-l-ʿumūm* (particular and general modes of speech). Such works have not survived, and it is not clear they were really works of *uṣūl al-fiqh*, though it seems highly likely they discussed issues of legal theory. Furthermore, there is evidence of legal theory debates amongst the early Twelver jurists – most notably the disputed positions of the so-called *qadīmāyn* ("two ancients") Ibn Abī 'Aqīl (fl. 4th/10th century) and Ibn Junayd al-Iskāfī (d. c. 377/988) and their use of *qiyās*. The first monographic treatment of legal theory is normally taken to be a highly abbreviated text which covers the main areas of *uṣūl* by the Baghdad-based scholar al-Shaykh al-Mufid (d. 413/1022) titled *al-Tadhkira fī uṣūl al-fiqh*. The text is preserved in Abū l-Faṭḥ al-Karājaki's (d. 449/1057) *Kanz al-fawā'id* – a miscellany of religious and literary comments. Some consider the *Tadhkira* text to be an abridgement of another, larger (lost) text of *uṣūl al-fiqh* by al-Shaykh al-Mufid.⁷⁰ The work could have been abbreviated by al-Mufid himself, or by al-Karājaki, or by someone else. It is not entirely clear which of these is the case from the text itself, or the introductory remarks in *Kanz al-fawā'id*.⁷¹ Whether the *Tadhkira* text is the work itself, or whether it is a selection or abbreviation of a longer text, at the current time, it is all we have of al-Mufid's monographic *uṣūl* production.

The features of the text, though, reflect typical early Twelver concerns around epistemology. The text is not dismissive of legal hermeneutics (indeed it describes and validates particular procedures), but demands that the results of deductive procedures result in certain knowledge (*ilm*). The certainty of the legal stipulations found explicitly mentioned in revelatory sources must be extended to legal stipulations derived from those sources through deductive methods. For example:

When the expression of a command is found following the mention of a prohibition, it reveals a permission, not an obligation; such as in the statement of God, may he be praised, "when prayer is over, disperse throughout the land"⁷² after his statement, "When prayer is called on Friday, proceed to the remembrance of God".⁷³

70 Stewart, *Islamic Legal Orthodoxy* (Salt Lake City, 1998), p. 133.

71 The published editions of the *Tadhkira* are not evidence of an independent manuscript tradition as they are simply lifted from the *Kanz al-fawā'id*.

72 Qur'an 62:10.

73 Qur'an 62:9. Al-Mufid, *al-Tadhkira* (Beirut, 1414/1993), pp. 30–31.

An imperative (a command) indicates obligation (*wujūb*) when appearing in a text of revelation in an unconditioned manner – this is the general rule. However, al-Shaykh al-Mufīd argues that if the imperative occurs immediately after a permission (as we find in this verse), it indicates a permission (*ibāha*) rather than an obligation. In the example case, God says that the people should disperse throughout the land after they have performed the Friday prayer, but this does not mean they are obligated to disperse. Unlike when they have just been obligated to attend the Friday prayer (through the imperative “proceed to the remembrance of God”), this imperative (i.e. “disperse!”) represents God permitting the people to leave. If some of them stay in the mosque after Friday prayer is finished, they have not transgressed the law as this second imperative is merely a permission to leave following the obligation to attend. The legal knowledge derived from the application of such a hermeneutic rule would appear to be as indubitable as the application of the “usual” rule which links imperative and obligation.

For al-Mufīd, legal sources and deductive mechanisms which do not bring *‘ilm* are invalid. This emphasis on certainty continues in the legal theory writings of al-Mufīd’s pupils: al-Sharīf al-Murtaḍā (d. 436/1044) and Muḥammad b. Ḥasan al-Ṭūsī (d. 460/1067). In addition to their well-known monographic treatments of *uṣūl* (*al-Dhari‘a ilā uṣūl al-shari‘a* and *‘Uddat al-uṣūl* respectively), there are numerous treatises, particularly by al-Murtaḍā, in which *uṣūl* issues are explored. The works by these two pupils appear to have been composed in tandem, with al-Ṭūsī’s *al-‘Udda* being finalised after al-Murtaḍā’s death. The two books share many similar doctrines, and on occasions, similar wording (some sections on *qiyās*, for example, are almost identical).⁷⁴ There are though distinctive doctrines particular to each scholar. Famously, al-Murtaḍā argued against isolated reports (*khbar al-wāḥid*) having any probative force, whilst al-Ṭūsī argued that isolated reports transmitted by Twelver Shi‘i transmitters could be used for some areas of the law. Al-Ṭūsī’s acceptance of these reports was to expose him to a thorough-going attack by Ibn Idrīs al-Ḥillī (d. c. 598/1201) who, though did not write a work of *uṣūl al-fiqh*, took issue with many of al-Ṭūsī’s legal positions in his *al-Sarā’ir: khbar al-wāḥid* for Ibn Idrīs did not (as they had not for al-Sharīf al-Murtaḍā) bring useful legal knowledge and to argue otherwise was to endanger the epistemological foundations of the *shari‘a*.⁷⁵

Notwithstanding the distinctive doctrines found in these works, there was a shared basis for legal theory: namely, the epistemological dedication to *‘ilm* (certain knowledge), *yaqīn* (verisimilitude) and *qaṭ‘* (definitiveness), and the concomitant rejection of *ra’y* (opinion) and *ẓann* (assumption). The reception of the works of al-Murtaḍā and al-Ṭūsī within the tradition is difficult to ascertain. Certainly, they were listed and referenced by subsequent authors, but their effect on thinking around legal theory appears unclear. In terms of general accounts of Twelver legal theory, the *uṣūl*-based introduction of *furu‘* work *Ghunyat al-nuzū‘* by Ibn Zuhra al-Ḥalabī (d. 585/1189) would appear to follow a similar trajectory. As the centre of gravity for Shi‘i scholarship shifted from Baghdad to south Iraq (Najaf and Ḥilla), the works of al-Murtaḍā and al-Ṭūsī were almost entirely displaced as representative works of Twelver *uṣūl* by the extensive body of work on legal theory produced by first al-Muḥaqqiq al-Ḥillī (d. 676/1277), and then by his nephew, al-‘Allāma al-Ḥillī (d. 726/1325).

74 Gleave, “Imami Shi‘i Refutations of Qiyas,” in *Studies in Islamic Legal Theory* (Leiden, 2002), pp. 267–293.

75 Modarressi, “Rationalism and Traditionalism in Shi‘i Jurisprudence: A Preliminary Survey,” *SI* 59 (1984), pp. 141–158.

Discounting al-Mufid's *al-Tadhkira*, al-Muḥaqqiq al-Ḥilli's *Ma'ārij al-uṣūl* can be seen as the first attempt by a Twelver Shi'i jurist to compose a *mukhtaṣar*-style *uṣūl* work. It is short, direct and with little argumentation; as in *mukhtaṣar* works of *fiqh*, the style of the *Ma'ārij* invites commentary and elucidation, though it does not seem to have been picked up as a target of commentary immediately. This may be because of the success of the *Mabādī l-uṣūl* of al-ʿAllāma al-Ḥilli, which, by contrast, was rapidly the subject of commentary (see below). Al-ʿAllāma's *Mabādī* was, in particular, seen as an authoritative expression of the general doctrines of Twelver Shi'i legal theory. In terms of its contents, al-ʿAllāma compromises in it on the stringent demands of certainty and verisimilitude, with an acceptance that some processes of legal deduction bring a lower (but acceptable) level of legal authoritativeness – that is, *ẓann* rather than *qaṭʿ*. There is a recognition of *ijtihād* (now distinguished from *ra'y* and *qiyās*) as a valid hermeneutic procedure. There is a promotion of the legal authority of the advanced juristic stratum by advancing *taqlīd* ("requisite following") to the qualified jurist (*mujtahid*). Indeed, the whole of legal theory is now filtered through the legal opinions of the *mujtahids*, and the rest of the community is simply required to be followers (*muqallidūn*).⁷⁶ The authority structure was clearly taken from Sunni *uṣūl* works, but with added political potency: the *mujtahids* were positioned as leaders of a minority Shi'i community which doctrinally refused to recognise the legitimacy of the ruling governing power. Al-ʿAllāma's theory of *ijtihād* and *taqlīd* gave the *mujtahids* a theoretical legal authority which was to be exploited by jurists in subsequent centuries.⁷⁷

The ideas of al-ʿAllāma embedded themselves in Twelver Shi'i *uṣūl* study, creating a sort of orthodoxy over the next three centuries. Fundamental to this "orthodoxy" was a full adoption of Mu'tazili theological principles within the discipline of legal theory, a promotion of a series of hermeneutic principles (though still excluding *qiyās*) whereby the revelatory texts might be mined for legal rulings in unprecedented areas, a promotion of the *ijtihād* for the *qualified* jurist (and a concomitant promotion of *taqlīd* for the non-*mujtahid*), and finally an acceptance that there were areas of the law where the legal rule was less than certain (i.e. *ẓann* not *ilm*). Indicators which are less than certain, such as single-narration reports (*khbar al-wāḥid*) or a possible (but uncertain) exegetically derived conclusion, became theoretically useful for the jurist, though always with the advisory notice that the results will be *ẓannī* not *ilmī*. For some time after al-ʿAllāma's *uṣūl* works, the broad framework was generally agreed even if particular hermeneutic mechanisms remained disputed. The next major independent study of *uṣūl* after al-ʿAllāma is probably the output of Shams al-Dīn Muḥammad al-ʿĀmili known as al-Shahīd al-Awwal (d. 786/1384), whose *al-Qawā'id wa-l-fawā'id* does not conform the standard format of a work of *uṣūl*, but clearly is based on similar epistemological foundations to the work of al-ʿAllāma. For example, in the series of principles relating to *ijtihād*, al-Shahīd al-Awwal argues that one *mujtahid* cannot decry the contrary opinion of another *mujtahid* in matters such as the direction of prayer. They each have their own opinion, and they are equally valid.⁷⁸ The underpinning epistemology supporting such a description had been laid out by al-ʿAllāma a couple of generations previously. The same could be said of the *Tamhīd al-qawā'id* by Zayn al-Dīn 'Alī b. Muḥammad al-ʿĀmili known as al-Shahīd al-Thānī (d. between 965–966/1557–1558). He states categorical-

76 Moussavi, *Religious Authority in Shi'ite Islam: From the Office of Mufti to the Institution of Marja'* (Kuala Lumpur, 2003), pp. 185–216.

77 Clarke, "The Shi'i Construction of Taqlid," pp. 40–64.

78 Al-Shahīd al-Awwal, *al-Qawā'id wa-l-fawā'id* (Beirut, 2012), v. 1, p. 317.

ly, "By general agreement, a *mujtahid* is not permitted to follow anyone else after he has done his own *ijtihād*. There are different opinions about whether [he can do this] before he has done his [*ijtihād*], but the soundest view is that this is absolutely prohibited."⁷⁹ Just as a *mujtahid* cannot decry another *mujtahid*'s opinion, he also cannot follow it, since to do so would be a dereliction of his duty to perform *ijtihād* for himself. Both these works are unusual, being structured as works of *qawā'id* (legal maxims/principles) rather than works of *uṣūl*. Nonetheless, the principles laid out in these works clearly mesh with the line of thought in Twelver Shi'ī *uṣūl al-fiqh* established by al-ʿAllāma.

As with most disciplines in the classical period, critical to the further development of *uṣūl* as a discipline was the emergence of a commentarial tradition. Al-Sharīf al-Murtaḍā's *al-Dhari'a* was the target of commentary within a century of its composition; commentary on al-ʿAllāma's *Tahdhīb al-wuṣūl* was almost immediate with a commentary by al-ʿAllāma himself, followed by commentaries by his son Fakhr al-Muḥaqqiqīn al-Ḥillī (d. 771/1369), and his pupils (and nephews) Ḍiyā' al-Dīn al-Ḥillī (d. c. 740/1339) and ʿAmīd al-Dīn al-Ḥillī (d. 754/1354). Al-ʿAllāma's dense, brief work *Mabādī l-uṣūl* similarly received commentaries from both ʿAmīd al-Dīn and Fakhr al-Muḥaqqiqīn among others. The *Mabādī* is, perhaps, the *uṣūl* work by al-ʿAllāma which invites commentary through its brevity; there was a steady stream of commentaries on it into the 19th century CE. The emergence of a vibrant commentary tradition reveals, of course, a rich history of institutional study in *madrasas* and study circles (in Ḥilla in the early period, and more widely over time) in which *uṣūl al-fiqh* is cemented as a critical discipline of study in the seminary curriculum.⁸⁰ There was a move away from expansive monographic works of *uṣūl* towards *mukhtaṣar* style works with numerous commentaries. Al-Ḥasan b. al-Shahīd al-Thānī (d. 1011/1602) produced perhaps the most studied work of Twelver Shi'ī *uṣūl* in the premodern period with his single volume *Ma'ālim al-uṣūl* (which is, properly speaking, an *uṣūl* introduction to a much larger *furū'* work titled *Ma'ālim al-dīn wa-malādh al-mujtahidīn*). This soon became a seminary textbook, and maintained that preeminent position into the 20th century CE – and commentaries are still written on it even today.⁸¹ Similarly, al-Shaykh al-Bahā'ī's *Zubdat al-uṣūl* is an extremely densely worded *uṣūl* work, subjected to a commentary by al-Shaykh al-Bahā'ī himself, and other commentaries by scholars during the author's lifetime and in the subsequent centuries.

A question underpinning scholarship both within and outside of the Twelver Shi'ī tradition concerns the continuity of *uṣūl* thinking (or lack thereof) from the works of al-Shaykh al-Mufīd, al-Sharīf al-Murtaḍā and al-Shaykh al-Ṭūsī to those of al-Muḥaqqiq al-Ḥillī, al-ʿAllāma al-Ḥillī and subsequent thinkers. Can the later tradition best be seen as an extension or development from the former? Alternatively, is the later scholars' absorption of *ijtihād* and *ẓann* into Shi'ī legal epistemology a break or innovation?⁸² The answer to this question was to be the subject of intense debate during the postclassical period. As with most pre-modern Muslim intellectual tradi-

79 Al-ʿĀmilī, *Tamhīd al-qawā'id* (Qum, 1374Sh/1995), p. 318.

80 Ali, "The Learned Families of Ḥillah," in *The School of Ḥillah and the Emergence of Twelver Shi'ism: Social Networks and the Concept of Tradition* (London, forthcoming).

81 For example, Muḥsin Dūzdūzānī (d. 2018) composed a collection of the best comments on the *Ma'ālim al-uṣūl* titled *Ajwad al-shurūḥ* (Qum, 1372Sh/1993), demonstrating the continued study of the *Ma'ālim* over the centuries.

82 Newman, "The Development and Political Significance of the Rationalist (Uṣūlī) and Traditionalist (Akhhbārī) Schools in Imāmī Shi'ism History from the Third/Ninth to the Tenth/Sixteenth Century," (Unpublished Ph.D. thesis, 1986); Gleave, *Scripturalist Islam*, pp. 1–31.

tions, jurists writing Twelver *uṣūl al-fiqh* were wary of innovation since it might indicate deviation from the straight path, and an implicit criticism of the past luminaries of the tradition. Hence, those who developed the doctrines in, say, al-ʿAllāma's writings, tended to argue that, despite the evolving and changing use of terminology, the fundamental continuity of the tradition was not broken by an intervention, and therefore al-Ḥasan b. al-Shahīd al-Thānī and al-Shaykh al-Bahāʾī were participating in an intellectual discipline which stretched back in an unbroken chain to the time of the Imams. Preserving the impression of continuity despite apparent change and development was a tried and tested mechanism for conserving the tradition's unity. However, there were indications of unhappiness with the apparently uncritical adoption of *ẓann* and the accompanying reduced emphasis on acquiring certainty implied in the developing epistemological framework. There emerged amongst some thinkers, an emphasis on hadith and a "return" to the collections of reports (*akhbār*) as sources of legal knowledge. These rumblings were to come to the fore in the enormously influential and controversial writings of the jurist Muḥammad Amīn al-Astarābādī (d. 1033 or 1036/1623 or 1626), and in particular his *al-Fawāʾid al-madaniyya fī l-radd ʿalā man qāla bi-l-ijtihād wa-l-taqlīd fī l-aḥkām al-ilāhiyya* ("Medinan Musings Refuting Those Who Support *Ijtihād* and *Taqlīd* in Divine Rulings"). Al-Astarābādī attacked al-ʿAllāma, describing him as a Sunni-influenced innovator whose promotion of *ẓann* and *ijtihād* was contrary to the message of the Imams. He saw in al-ʿAllāma's legal theory a degradation of the position of the Imams and a promotion of other sources of law (including pure reason, *ʿaql*), and specifically the practice of *ijtihād*. The Shi'a had taken a wrong turn when they adopted al-ʿAllāma's legal theory, and all those who have followed him have put the "true religion" and "saved sect" (*al-firqa al-nājiyya*) in grave danger, al-Astarābādī argued. It was from this pointed and direct attack on the mainstream of legal theory that the movement known as al-Akhhāriyya (i.e. those who prioritise the reports – *akhbār* – of the Imams) developed amongst the Shi'a of the Arabian peninsula, in Safavid Iran and in the seminaries of the Iraqi shrine cities. Unlike their opponents, who became known as al-Mujtahidūn (promoters of *ijtihād*) and al-Uṣūliyya (defenders of the predominant *uṣūl al-fiqh* – legal theory), the Akhhāris viewed al-ʿAllāma's ideas as a threat to central doctrines of Shi'ism, and they sought to construct an alternative legal theory in which the knowledge (*al-ʿilm*) contained in the reports of the Imams became the first point of reference for the jurist faced with a legal issue.

Whether al-ʿAllāma's conception of *uṣūl al-fiqh* was an innovation, or a continuation of the Imams' message was, then, not a purely historical question at this time. His legacy, and the level to which his paradigm should be adopted, lay at the heart of the Akhhāri-Uṣūli dispute in the postclassical period. In Iran, the dispute became mixed up with state-*ulamāʾ* relations, as members of both "schools" sought royal patronage to promote their vision of the *shariʿa* and its derivation.⁸³

In terms of literary production, we see a rise in popularity of new genres in which legal theory was discussed. Strictly speaking, Akhhāris did not see *uṣūl al-fiqh* (as a discipline) to be necessary: the legal norms are derived, in a straightforward and uncomplicated way, from the sayings and actions of the Imams; the sayings and actions of the Imams are recorded in reports (*akhbār*) which have been sifted, selected and collected into books by early Shi'i scholars. According to Akhhāri doctrine, only the reports which are historically accurate have been included in these collections, so the jurist can rely on them as the basis for legal norms. The task of the jurist is not

83 Sefatgol, *Sākhṭār-e nahād wa andisheh-ye dinī dar Irān-e aṣr-e Ṣafawī* (Tehran, 1389Sh/2010).

to interpret and assess these reports, but to pass on the legal knowledge which is found within them.⁸⁴ In the *uṣūlī/mujtahid* theory, the jurist exerts effort (*istifrāgh al-wus'*) to understand the intended meaning of the Lawgiver (*shāri'* – that is, God, the Prophet or the Imams), reaching an opinion with which other jurists might legitimately disagree. In the Akhbārī theory, the jurists are the guardians and transmitters of the knowledge (*'ilm*) found in the reports, and their task is to transfer this knowledge to the individual members of the community without the jurist's personal interpretation influencing the presentation of the legal norm. Simple as the Akhbārī theory may appear (some have even called it a form of "fundamentalism" or "literalism"),⁸⁵ al-Astarābādī, and those thinkers who followed his general approach in subsequent centuries, were actually to produce a series of nuanced theoretical works in which they revealed remarkable hermeneutical complexity and sophistication. For example, the assertion that the *akhbār* in the collections of the early jurists were all reliable sources for legal rulings required a deconstruction of the method of hadith categorisation developed by Jamāl al-Dīn Ibn Ṭāwūs al-Ḥillī (d. 673/1274–5) and al-'Allāma and developed in over three centuries of juristic reflection. The Uṣūlī approach was to place individual reports into one of (usually) four categories, with each category revealing the level of confidence the jurist might have in the report when deriving legal norms. Al-Astarābādī rejected this exercise, arguing that not only was this categorisation schema a Sunni importation, but more seriously, the approach is an accusation of bad faith against the early generation of Shi'i intellectuals. Categorising the reports in terms of reliability, he argues, is to undermine the work which the early scholars carried out in sifting and determining which reports to include in their collections. The early scholars had access to materials and sources which are lost to later generations; and therefore, they were able to make selection decisions which later scholars (such as al-Astarābādī's contemporary Uṣūlīs) are unable to make. The assertion that collators of the so-called Four Books (*al-kutub al-arba'a*)⁸⁶ performed an error-free task became an important element of Akhbārī polemics, and led to the Four Books gaining a sort of "canonical" status.⁸⁷

The Akhbārīs, even though they rejected the discipline of legal theory, were forced to engage with it on its own terms in order to deconstruct it. Al-Astarābādī did not write a work which followed the structure of a work of *uṣūl*, and many subsequent Akhbārī scholars, consciously or not, also avoided the *uṣūl* genre. In a period when composing a work of *uṣūl* was one indication of scholarly prowess, their non-engagement with the genre can be interpreted as an explicit comment on the utility of *uṣūl al-fiqh*. Mullā Muḥammad Ṭāhir al-Qummī (d. 1098 or 1100/1686 or 1688) and Muḥammad b. al-Ḥasan al-Ḥurr al-'Āmili (d. 1104/1693) were renowned scholars, and prominent within the Iranian Safavid seminary and legal system, and they made numerous comments on issues of *uṣūl al-fiqh*. They did so, though, in an almost intentionally unsystematic manner writing works of *fawā'id* ("miscellaneous comments") rather than full-blown works of

84 Gleave, *Inevitable Doubt*, pp. 29–86.; Abisaab, "Shi'i Jurisprudence, Sunnism and the Traditionist Thought (akhbārī) of Muhammad Amin Astarabadi (d. 1626–7)," pp. 5–23.

85 Moddarressi, *Introduction to Shi'i law* (London, 1984), pp. 23–58.

86 Muḥammad b. Ya'qūb al-Kulaynī's (d. 329/941) *al-Kāfi*, Ibn Bābawayh's (d. 381/991) *Man lā yaḥduruhu al-faqīh*, Muḥammad b. al-Ḥasan al-Shaykh al-Ṭūsī's (d. 460/1067) *Tahdhīb al-aḥkām* and *al-Istibṣār*.

87 Ehteshami, "The Four Books of Shi'i Hadith: From Inception to Consolidation" *ILS* 29 (2022), pp. 225–279; Rajani, "Between Qum and Qayrawān: Unearthing Early Shi'i Ḥadith Sources," *BSOAS* 84/3 (2021), p. 420, n. 4.

uṣūl. For them, systematising legal theory, in itself, appears to be a submission to the principles of predictability and coherence, which run counter to Akhbārī doctrine. Working within *uṣūl*'s generic constraints, even when advocating an Akhbārī position, is a compromise which only some Akhbārīs appear willing to make. Nonetheless, there are examples of Akhbārī works of *uṣūl al-fiqh*. They follow (roughly) the recognised structures and tackle the same canonical set of "issues" or "problamata" (*masā'il*). These include the *Hidāyat al-abrār* of Ḥusayn b. Shihāb al-Dīn al-ʿĀmilī (d. 1076/1665), and later Yūsuf al-Baḥrānī's (d. 1186/1772) *al-Muqaddimāt* ("Introductory Remarks") to his extensive Akhbārī *fiqh* work *al-Ḥadā'iq al-nāḍira fī aḥkām al-ʿitra al-tāhira*. The influential *al-Wāfiya* of ʿAbdallāh al-Fāḍil al-Ṭūnī (d. 1071/1600) also has clear Akhbārī sympathies, at least in some sections. It is obviously structured in the standard manner of a work of *uṣūl al-fiqh*, and its presentational orthodoxy has led to it being incorporated into the canon of Uṣūlism despite its occasionally explicit Akhbārī-leaning content. An edition of a section from one of the many commentaries on al-Ṭūnī's *al-Wāfiyya* can be found in Chapter 2 of this volume. In addition to monographic texts, Akhbārī scholars also engaged in commentarial works using past texts as the base. The comments were not always positive (since the base text may have been Uṣūlī in character). Al-Astarābādī, for example, wrote a critical commentarial gloss (*ḥāshiya*) on the standard Uṣūlī work al-Muḥaqqiq al-Ḥillī's *Maʿārij al-uṣūl*. Of particular note is the sudden popularity of the commentary on al-Ṭūsī's *Uddat al-uṣūl* of the Akhbārī scholar Mullā Khalīl al-Qazwīnī (d. 1089/1678). His *Ḥāshiyat 'Uddat al-uṣūl* was much copied, and much read, and was itself subjected to supercommentaries by both supporters and opponents.

As the Akhbārī tendency was developing a coherent literary corpus (and perhaps even forming a "school" – *madhhab*, *firqa*, *madrasa*), scholars who considered themselves to be developing the fundamental principles of legal theory laid down by al-ʿAllāma (i.e. the Uṣūlis) developed yet more nuanced elaborations in more standard works of *uṣūl al-fiqh*. Foremost amongst the works composed in this period were the above mentioned *Maʿālim al-uṣūl* (of Ḥasan b. al-Shahīd al-Thānī) and al-Shaykh al-Bahā'ī's *Zubdat al-uṣūl*. These two works attracted together 150 recorded commentaries (104 for *Maʿālim* and 46 for *Zubda*) over the next 3 centuries, demonstrating the continued vibrancy of Uṣūlī thinking despite the Akhbārī challenge.⁸⁸ Sections from two commentaries on al-Shaykh al-Bahā'ī's *Zubdat al-uṣūl* are included in this volume, both dating from a century or so after his death, and they testify to the high scholastic culture which had developed. In Chapter 1, a section from the *Sharḥ Zubdat al-uṣūl* by the Safavid scholar, Muḥammad Ṣāliḥ al-Māzandarānī (d. 1081/1670) is presented. Chapter 4 contains a portion of the *Ghāyat al-ma'mūl fī sharḥ Zubdat al-uṣūl* by Jawād b. Sa'dallāh al-Kāzīmī (d. 1065/1655). These two chapters are just a snippet of the wealth of commentaries from Uṣūlī scholars from this period.

In the late 18th century a rivalry between two eminent scholars played out in the shrine city of Karbala in southern Iraq. Yūsuf al-Baḥrānī (whose voluminous *al-Ḥadā'iq al-nāḍira* has already been mentioned), sometimes described as a "moderate Akhbārī" had gathered around him a devoted circles of followers, and was clearly the leading scholar of Karbala until his death in 1186/1772. The dominance of Akhbārism in Karbala was supposedly such that students carrying works of Uṣūlī jurisprudence were in danger of verbal and physical attack. In this atmosphere, a scholar from Iran who had arrived in Karbala, Muḥammad Bāqir al-Bihbahānī (d. 1205/1791), began teaching Uṣūlism secretly. Gradually, his classes gained momentum and popularity, and

88 Dirāyatī, *Fihristegān-e nuskeḥā-ye khaṭṭī-ye Irān* (Tehran, 1390Sh/2012), v. 30, pp. 195–197 (*Maʿālim al-uṣūl*) and v. 17, pp. 551–552 (*Zubdat al-uṣūl*).

he was able to engage in semi-public debates with al-Baḥrānī, arguing for the *uṣūlī/mujtahid* position (as he understood it). The two scholars were clearly diametrically opposed, in terms of legal methodology, but appear to have viewed each other with great respect. When al-Baḥrānī died, al-Bihbahānī led the prayers at the public funeral, thereby affirming to the gathered Shi'a that al-Baḥrānī was, indeed, a scholar of great merit. However, al-Baḥrānī did not leave an Akhbārī scholar of comparable stature, and al-Bihbahānī was, following al-Baḥrānī's death, the undisputed leading scholar in southern Iraq. He was known by the title al-Waḥīd ("the Unique") and was able to begin, more openly, to train a generation of Uṣūlī scholars who were to lay the foundations for contemporary Twelver Shi'ī jurisprudence until today. Al-Bihbahānī's own scholarly output did not include a properly structured *uṣūl* monograph; it did, though, include a number of treatises (*rasā'il*) and "miscellaneous remarks" works (*fawā'id*) which were much read and copied. In particular, he composed two collections of "miscellaneous remarks" – an early and a late (*al-Fawā'id al-qadīma* and *al-Fawā'id al-jadīda* respectively). Together, they were sometimes referred to as *al-Fawā'id al-ḥā'iriyya*. In this collection he presents a reassertion of Uṣūlism, a promotion of the authority of the *mujtahid's* *ẓann*, and a systematic refutation of the naïve Akhbārī acceptance of all the recorded Imams' reports (*akhbār*). *Al-Fawā'id al-ḥā'iriyya*, along with his targeted anti-Akhbārī treatises (including his *Risāla fī l-ijtihād wa-l-akhbār* and *Risāla fī ḥujjiyyat al-ẓann*) became the foundational texts of an Uṣūlī renaissance spearheaded by his pupils.

Al-Bihbahānī tutored a series of highly influential Uṣūlī jurists who developed and elaborated his approach, and within a few years, the Akhbārī school had been marginalised and Uṣūlism formed the new orthodoxy in the seminaries. The cohort of al-Bihbahānī's pupils were, in many ways, the ones who really established Uṣūlism. They included Muḥammad Maḥdī Baḥr al-'Ulūm (d. 1212/1797), Ja'far b. Khiḍr Kāshif al-Ghiṭā' (d. 1227/1812), al-Sayyid 'Alī al-Ṭabāṭabā'ī (d. 1231/1816, known as Šāḥib al-Riyāḍ) and al-Mirzā Abū l-Qāsim al-Qummī (d. 1231/1816). All of them composed critical works in the field of *uṣūl al-fiqh*, including Kāshif al-Ghiṭā's *Kashf al-ghitā' 'an mubhamāt al-sharī'a al-gharrā'* (which has an *uṣūl* section), Baḥr al-'Ulūm's *al-Fawā'id al-uṣūliyya* and al-Mirzā al-Qummī's popular *Qawānīn al-uṣūl* (also known as *al-Qawānīn al-muḥkama fī l-uṣūl*). Al-Mirzā al-Qummī is normally characterised as a thinker who pushed the notion that certain legal knowledge was no longer available – all that was left was legal opinions, and that it was the *mujtahids* who were, in the main, the only individuals qualified to carry out *ijtihād* and produce these opinions. Not all Uṣūlīs were so pessimistic about the possibility of acquiring legal knowledge, but this did not prevent the *Qawānīn* becoming the subject of over 56 commentaries over the next century.⁸⁹ Also amongst al-Bihbahānī's pupils was Muḥsin b. al-Ḥasan b. Murtaḍā al-A'rajī (d. 1227/1812), a section of whose commentary on al-Tūnī's *al-Wāfiya* is edited in Chapter 2 of this volume. This generation of scholars effectively extinguished the Akhbārī school. The last Akhbārī scholar of any significant fame, al-Mirzā Muḥammad al-Akhbārī (d. 1232 or 1233/1817 or 1818), was subject of a concerted campaign of vilification by Uṣūlī scholars, eventually leading to his murder. An edition of al-Mirzā Muḥammad al-Akhbārī's introduction to his *Fath al-bāb ilā l-ḥaqq wa-l-ṣawāb* is edited and presented in Chapter 5 below. This work, in common with al-Mirzā Muḥammad's many other Akhbārī expositions, argues for the supremacy of legal knowledge derived through the reports of the Imams, and severely censures the *mujtahids* for presenting their unsubstantiated "opinions" (*ẓunūn*) as somehow legally binding (i.e. being worthy of *taqlīd*). In the passage edited and summarised in Chapter 5, Mirzā Muḥammad cri-

89 Dirāyatī, *Fihristegān-e nuskhahā-ye khaṭṭī-ye Irān*, v. 25, pp. 545–546.

tiques the Uṣūlī notion that the door to certain knowledge is “closed” and instead argues that the reports of the Imams can be relied upon to bring the Shi'i community certain legal knowledge (*ilm*).

Mirzā Muḥammad al-Akḥbārī's controversial public defence of Akḥbārism – in which he expressed his exasperation with the community for deviating from the Imams and turning instead to the fallible opinions of the *mujtahids* – did not reverse the decline of the Akḥbārī school. The rest of the 13th/19th century witnessed an explosion in the production of *uṣūl al-fiqh* works in Iran, Iraq, India and elsewhere in the Shi'i world and nearly all of them employed (and elaborated on) the jurisprudential framework laid out by al-Bihbahānī. The *ulamā*, as a social class, became increasingly wealthy, more influential, and, critically, were able to operate independent of the state.⁹⁰ This facilitated the production of scholarly literature, including *uṣūl al-fiqh*, in previously unheard-of quantities. Lengthy monographs, detailed treatises, commentaries on key *uṣūl* works of the past centuries were written in huge number. The pupils of al-Bihbahānī maintained this legacy, and an example of this can be seen in Chapter 3 with edition of a section of the *Ka-wāshif al-ḥujub 'an mushkilāt al-kutub* by Muḥammad Ṣāliḥ b. Muḥammad Muḥsin al-Māzandarānī (d. 1285/1868).⁹¹ Key *uṣūl* writers in this period include Muḥammad b. 'Alī al-Ṭabāṭabā'i “al-Mujāhid” (d. 1242/1827), so called because of his involvement in fighting of the second Russo-Persian War (1722–1723). Al-Mujāhid's *Mafātiḥ al-uṣūl* is a wide-ranging and impressive piece of *uṣūl* scholarship. A little later than al-Mujāhid, yet more long and detailed *uṣūl* works were composed including *al-Fuṣūl al-gharawiyya* of Muḥammad Ḥusayn al-Ḥā'iri al-Iṣfahānī (d. 1254/1838–9), the *Ḍawābiṭ al-uṣūl* of Ibrāhīm b. Muḥammad Bāqir al-Qazwīnī (d. 1262/1845–6, 6 volumes in the print edition) and a new commentary on the *Ma'ālim al-uṣūl* of Ḥasan b. al-Shahīd al-Thānī, the *Hidāyat al-mustarshidin* of Muḥammad Taqī al-Iṣfahānī (d. 1248/1832). In these works, there emerges the prevalent methodology of contemporary Shi'i jurists which were later to be commonly referred to as *al-uṣūl al-'amaliyya* (“procedural principles”). These Uṣūlīs focussed attention on the operation of particular hermeneutic tools which were available to the *mujtahid*, making this exercise central to providing the wider Twelver Shi'i community with practical guidance for their religious life. This included principles such as “the principle of fundamental non-assessment” (*aṣālat al-barā'a*)⁹² or “the principle of the continuance of a situation” (*istiṣhāb al-hāl*).⁹³

The thinking around these principles was incrementally developed by Uṣūlī thinkers in the 19th century, and was most explicitly elaborated by al-Shaykh al-Murtaḍā al-Anṣārī (d. 1281/1864). Al-Anṣārī's *uṣūl* composition has the title *Farā'id al-uṣūl*, but is regularly referred to as *al-Rasā'il* (“the treatises”) and is an unusually structured work of legal theory. It is arranged

90 Algar, *Religion and state in Iran, 1785–1906* (Berkeley, 1969); Litvak, *Shi'i scholars of nineteenth-century Iraq* (Cambridge, 1998).

91 Not to be confused with the Safavid scholar Muḥammad Ṣāliḥ al-Māzandarānī (d. 1081/1670) mentioned above, whose commentary on the *Zubda* has already been mentioned and is edited in Chapter 1.

92 Under *aṣālat al-barā'a* (or *al-barā'a al-aṣliyya*), the jurist is compelled to assume that an action is “unassessed” (i.e. “free” – *barā'a* – of assessment) in the absence of evidence of an assessment. See Gleave, *Inevitable Doubt*, p. 92–100.

93 Under *istiṣhāb al-hāl* (sometimes simply *istiṣhāb*), the jurist assumes that the assessment of particular state of affairs remains as it was (the *status quo ante*) until there is evidence that something has happened to require a change of assessment. See Gleave, *Inevitable Doubt*, pp. 127–130.

around a series of collated comments categorised by epistemological category, rather than legal source. In the first section, al-Anṣārī analyses legal "certainty" (*ilm* – that is, those legal procedures and sources which bring certain knowledge of the Lawgiver's intention); in the second section, he analyses "opinion" (*ẓann* – that is, those procedures and sources which provide the jurist with an opinion of the Lawgiver's intention, which is less than certain but does provide a basis for legal advice); in the third section, he analyses "doubt" (*shakk* – that is when the evidence is such that he is unable to provide even an opinion about what the legal ruling should be). In the last of these cases, there is a theological requirement for the jurist to provide guidance to the legal subject (*mukallaf*), and so there must be a mechanism for identifying some sort of ruling. It is here that al-Anṣārī proposes the theory of *al-uṣūl al-ʿamaliyya*:

When [the individual legal subject] is in a position of doubt (*shakk*), the source for him in such circumstances are the legal principles established for situations of doubt. These are called *al-usul al-ʿamaliyya* (procedural principles).⁹⁴

It was from this basis that the leading Uṣūlī of the next generation, al-Ākhūnd al-Khurāsānī (d. 1329/1911), composed his highly influential work *Kifāyat al-uṣūl*. In the *Kifāya*, al-Khurāsānī expanded the scope of *al-uṣūl al-ʿamaliyya*, such that these procedural principles emerged as perhaps the primary tools of the jurist – and it is on this basis that much twentieth century Twelver legal theory progressed. There remain discussions about when the procedural principles should be used; there are debates around which principle is primary (i.e. which should operate first in the specific cases); and there are debates around the status of the ruling which emerges from the application of the procedural principles (is it *ẓann* like the *ẓann* of the *mujtahid*? or is it of a different epistemological category?). In the second half of the twentieth century a few scholars attempted to summarise and restructure the study of *uṣūl al-fiqh* by writing concise books that could also serve the purpose of textbooks for the seminary students. Among these works, two books merit mention that continue to be taught and studied until today namely, Muḥammad Riḍā al-Muẓaffar's *Uṣūl al-fiqh* and Muḥammad Bāqir al-Ṣadr's *Durūs fī ʿilm al-uṣūl* (popularly known as *Halaqāt*, in three volumes: elementary, intermediate and advanced level). All this has made twentieth century Twelver Shi'i *uṣūl al-fiqh* an advanced and complex system of legal theory, in which readers would be justified in likening much contemporary Twelver Shi'i *uṣūl* writings to philosophy rather than jurisprudence. What these developments have demonstrated is that the generative questions of much modern Twelver *uṣūl al-fiqh* are epistemological. In this sense, then, the concerns of the earliest Twelver Shi'i jurists over preserving *ilm* in the face of the (Sunni) *ẓann* are maintained in the writings of many Twelver contemporary jurists.

The Chapters

Each chapter of this volume consist of three parts: introduction, Arabic edition of the text and its detailed commentary in English. The introduction features the author's biography, the position the author occupies in a particular Shi'i *uṣūl* tradition, the topic under discussion in the edited passages and the manuscripts used for preparing the editions. The Arabic texts are critically edited after collating and comparing at least two manuscripts (where available, and in some instances five manuscripts were consulted). The variants of these manuscripts were closely studied

⁹⁴ Al-Anṣārī, *Farā'id al-uṣūl* (Qum, 1999), v. 1, p. 25.

by a group of two or three contributors and finally moderated by both the editors. All the variants, major and minor, are recorded in the footnotes. The significance of recording minor variants lies, we argue, not only in preparing a critical edited text but also in showcasing the variegated nature of manuscript tradition of the Persian, Iraqi and Yemeni Shi'i scholarly communities. The existence of numerous manuscripts (abbreviated to MSs) with all their variants also depict the popularity of these *uṣūl* texts; they were widely copied and studied within the tradition. The third section of each chapter comprises detailed commentaries in English of the edited Arabic texts. It is important to note that these are not translations. The contributors have engaged in detailing the arguments of the author, explicating the meaning of the obscured passages, offering references to the sources consulted by the authors and most importantly, evaluating the strength, or otherwise, of the author's approach, method and conclusions. In short, these commentaries are not merely English rendition of the Arabic texts, but rather critical engagements with the authors' arguments and positions. These commentaries become more intense in Chapters 1, 2, 4 and 6 since the Arabic texts of these chapters are themselves commentaries of seminal *uṣūl* works. Besides writing commentaries on the commentaries, the contributors of these chapters have elucidated the *matn-sharḥ* relation: the *sharḥ* (commentary) is put in conversation with the *matn* (base text). The contributors explain how, where and why the commentators chose to explain, comment or criticise certain passages of the base text while leaving others without comment. For its optimum usage, this volume is designed in such a way that the Arabic texts and their corresponding English commentaries run as parallel-text format on facing pages. Furthermore, each text, for the ease of reference, is broken down into passages that are assigned the same numerals ([a], [a.1], [a.2], [b], [c] etc.) and/or numbers [1], [2], [3] etc.) as their corresponding passages in the commentary.

Careful consideration was given to the selection of these texts. They represent all the three Shi'i *uṣūl* traditions: Twelver (Chapters 1–5), Zaydi (Chapters 6–7) and Isma'ili (Chapter 8). From the viewpoint of geographical locations, Zaydi and Isma'ili works (Chapters 6–8), for instance, were composed in Yemen whereas Twelver works belong to Safavid (Chapters 1 and 4) and Qajar (Chapter 3) Iran and the shrine cities of Iraq (Chapters 2 and 5). In reference to the dates of their compilation, the earliest text in this volume belong to the late 6th/12th century (Chapter 8) and latest from the mid-13th/19th century (Chapter 3) – they all, nonetheless, belong to the post-classical Islamic *uṣūl* tradition. To represent the diverse Shi'i *uṣūl* commentary tradition, four texts (Chapters 1, 2, 4 and 6) were chosen for this volume. These commentaries indicate that their base texts were essentially composed to be explicated by a teacher, discussed in class, and commented when appropriate. It should be noted that these four commentaries do not follow a single style. Chapter 6, for instance, is a *ḥāshiya* (supercommentary or gloss) that contains interlinear and marginal notes embedded within the base text. Chapters 1 and 4 are both commentaries on the *Zubdat al-uṣūl* of al-Shaykh al-Bahā'i (d. 1030/1620 or 1031/1621) but one is *mazjī* (blended) whereas the other is a non-*mazjī* (non-blended) commentary. In a blended commentary, the commentators quote the words of the base text in small chunks, while incorporating their views in a way that the grammatical structure of the entire text remains sound. A non-blended commentary, on the contrary, contains passages from the base text followed by a detailed explication of the base text's expositions while elucidating its obscure passages, elaborating ambiguous content and often criticising the author's arguments. Chapter 2 also follows the style of a non-blended commentary.

In reference to the themes, these eight texts deal with topics drawn from the key discussions in Shi'ī *uṣūl* literature: the validity of personal juristic reasoning (*ijtihād*); linguistic interpretations when the text is obscure; the qualifications of a jurist to perform *ijtihād*; the role of certainty in the deduction of law; the probative force of solitary reports (*al-akḥbār al-āḥād*); the (im) permissibility of using analogical reasoning in deducing laws; and the consensus of the progeny of the Prophet, and legal authority of the Imams. When read side-by-side, these texts indicate that not all themes are distinctively Shi'ī. It is true, however, that some of these topics can only be understood within a Shi'ī legal framework. The discussions concerning analogical reasoning (Chapter 6), consensus of scholars (Chapter 7) and personal juristic opinions (Chapter 8), for instance, are directly related to the discussion of the legal authority of the Imams – a key doctrine in Shi'ī theology. Some Shi'a reject these hermeneutical tools because they undermine the role and position of the Imams (Chapter 5). The Imams (and their reports in their absence) claim, Twelver and Isma'ili Shi'ī legal thinkers assert, the ultimate position of authority for interpreting the law. For Zaydi Shi'a, though, analogy and consensus have a space in legal theory, separate from the questions around the authority of the Imams. It is hoped that this volume contributes to our understanding of inter and intra-Shi'ī *uṣūl* discourses as well as its extensive manuscript and commentary traditions. Let us now turn to introducing individual chapters of this volume.

Gleave's chapter deals with two linked *uṣūl* issues of personal juristic reasoning (*ijtihād*). The first is related to the *ijtihād* of the Prophet: can we say that Prophet Muḥammad carried out *ijtihād* or did the rulings he declared come out of revelation? The issue is problematic for various theological and legal reasons laid out by Gleave. The second issue concerns the doctrine that all those who carry out personal juristic reasoning (*mujtahids*) are right (*muṣīb*). This doctrine (known as *taṣwīb*), Gleave demonstrates, was controversial and in the *Zubda*, al-Shaykh al-Bahā'ī asserts that it is false, arguing instead that only one of the *mujtahids* can be right and the others, however meritorious their juristic effort may have been, are wrong. By examining the texts of al-Shaykh al-Bahā'ī and al-Māzandarānī (d. 1081/1670), Gleave highlights the nuances of *matn-sharḥ* tradition of postclassical Shi'ī *uṣūl* works which he defines as 'a sort of compound work of the base text and commentary'.

Qazwini, Ali and Ünal examine al-Tūnī's (d. 1071/1660) *al-Wāfiya* and its commentary *al-Wāfi* by al-A'rajī (d. 1227/1812). The topic of discussion revolves around universal and particular (*al-āmm wa-l-khāṣṣ*) utterances of the Prophet and Imams: How do we understand their utterances when they are asked a legal question and, without requesting further clarification or details, they reply? Does the fact that they did not seek further clarification or detail (*tark al-iṭfāṣāl*) mean that their statements should be considered universal? Would such utterances give rise to a universal legal directive? Qazwini, Ali and Ünal present a detailed discussion of several possibilities, drawing on the opinions of al-A'rajī's Shi'ī and non-Shi'ī Uṣūlī predecessors.

Ehteshami and Rezakhany analyse two passages from the *Kawāshif al-ḥujub 'an mushkilāt al-kutub* of the 13th/19th century scholar al-Māzandarānī (d. 1285/1868). The first passage concerns whether or not becoming a legal expert (*mujtahid*) depends on having faith. Ehteshami and Rezakhany highlight different positions in relation to the question of interconnectivity of the two disciplines, namely jurisprudence and theology. Al-Māzandarānī, Ehteshami and Rezakhany demonstrate, does not deem it necessary for a *mujtahid* to be an expert in the discipline of theology, but rather considers studying it to be a waste of time. The second passage examined in this chapter deals with the probative force of the *prima facie* sense of the Qur'an. Refuting the Akh-

bārī position, al-Māzandarānī lists ten arguments, besides consensus, that affirm the probative force of the *prima facie* sense of the Qur'an. In this chapter, Ehteshami and Rezakhany display al-Māzandarānī's style of writing in which he frequently engages in dialogue with imaginary interlocutors to refute potential objections that might be raised against his own position.

Rafī and Abu-Alabbas's chapter deals with the topic of solitary reports (*al-akhbār al-āḥād*) and their role as legal sources; this topic is conventionally studied in the chapters of "probativity of solitary reports" (*ḥujjiyyat al-akhbār al-āḥād*) and "methods of resolving contradictory and conflicting reports" (*al-ta'ādul wa-l-tarjīḥ*). The text studied in this chapter is yet another commentary on the *Zubdat al-uṣūl* composed by the author's own student, al-Kāẓimī (d. 1065/1655). The first section lists the conditions that are required for the reports of solitary transmitters in order to be considered legally binding proofs. The author enumerates five such conditions: adulthood (*bulūgh*), sanity (*ʿaql*), uprightness (*ʿaḍl*), accuracy (*ḍabt*) and belief (*īmān*). The commentator delves deeper into each of these conditions, particularly uprightness. The question which al-Kāẓimī attempts to address, Rafī and Abu-Alabbas highlight, is whether Sunnis, or for that matter non-Twelve Shi'a (such as the Fathīyya, the Nāwūsiyya, the Wāqifiyya) are sufficiently upright for their reports to be considered legally binding. The second section examines the methods of appraising the transmitters and whether the testimony of a single upright Twelver scholar is a sufficient basis on which judgment could be passed on the trustworthiness, or otherwise, of a transmitter. In this section, al-Kāẓimī deliberates on the instances in which scholars of *ʿilm al-rijāl* (transmitter biographies) have contradictory opinions vis-à-vis certain transmitters and offers methodological solution to resolve such contradictions.

Drawing from the *Fath al-bāb* of Mirzā Muḥammad al-Akhbārī (d. 1232/1817), Rajani and Husayn present the Akhbārī-Uṣūlī debate concerning whether the "door to knowledge is closed" (*insidād bāb al-ʿilm*) during the occultation (*ghayba*) of the Twelfth Imam? By this the Uṣūlīs meant, Rajani and Husayn demonstrate, that certainty as to the content and the sources (primarily the reports from the Imams, the *akhbār*) of the law is no longer available to the qualified jurist (i.e. the *mujtahid*). Mirzā Muḥammad, following the doctrines of the Akhbārī school more generally, rejects this doctrine. In the *Fath al-bāb*, he sets to refute the doctrine by demonstrating that all the arguments the Uṣūlīs use to justify the loss of certainty are invalid. These arguments (which are in fact, counter-arguments to Uṣūlī arguments and presumptions), Mirzā Muḥammad aims to demonstrate that the occultation of the Twelfth Imam (the *ghayba* doctrine) does not mean knowledge somehow is lost; the sources remain available, and they are not difficult to understand nor are they deliberately evasive (due to the Imams' dissimulation – *taqiyya*), as the Uṣūlīs claim. Rajani and Husayn demonstrate Mirzā Muḥammad's methodological commitment to the fundamental Akhbārī legal epistemology by highlighting his unwavering commitment to the *akhbār* of the Imams.

Islam and Thiele examine the Zaydī *uṣūl* work *Hāshiyat al-Fuṣūl al-lu'lu'yya* of Aḥmad b. ʿAbdallāh Ibn al-Wazīr (d. 985/1577). This work is a gloss on Ṣārim al-Dīn al-Wazīr's (d. 914/1508) *al-Fuṣūl al-lu'lu'yya*. In his commentary, Aḥmad b. ʿAbdallāh explains points of interpretive disagreement among the schools of law and clarifies linguistic and terminological details of genre-specific vocabulary introduced by al-Wazīr in *al-Fuṣūl*. Islam and Thiele surmise that the brevity of *al-Fuṣūl* and the *Hāshiya*'s focus on foundational explanations suggest that these two texts were written for teaching purposes. The topic under discussion in this chapter is analogy (*qiyās*). Contrary to the Twelvers, Islam and Thiele demonstrate, Zaydī Uṣūlīs consider *qiyās* to be a valid juridical tool of interpretation.

Gleave and Rajani's chapter present yet another Zaydi *uṣūl* text *Qanṭarat al-wuṣūl ilā 'ilm al-uṣūl* by the Yemeni scholar al-Mu'ayyadī (d. c. 1044/1634). Consensus is, for al-Mu'ayyadī (as for most Zaydi writers), a valid source of law (as Gleave and Rajani demonstrate) but when discussed "generally" (*āmm*), it is restricted to the unanimous agreement of all *mujtahids* (and perhaps all members of the community, *mujtahid* or not). More significant for him (and for Zaydis more widely) is the consensus of the Family of the Prophet – by which he means, it becomes clear, the descendants of the Prophet (*sayyid*, pl. *sāda*) who have reached the level of *ijtihād*. Gleave and Rajani illustrate that though much of the discussion is quite derivative from Sunni *uṣūl* discussions, there is nonetheless a distinctive set of Zaydi concerns present in the text..

In the last chapter of this volume, Rajani examines *Mukhtaṣar al-uṣūl* of the 5th Musta'li-Ṭayyibī Isma'ili *dā'i muṭlaq* 'Alī b. Muḥammad b. al-Walid (d. 612/1215). 'Alī b. Muḥammad introduces his work as a concise book on *uṣūl* that is set to refute the opinions espoused by other legal and doctrinal schools. Though not essentially a work of legal theory, Rajani illustrates, it contains discussions concerning theories of legal interpretation, legal hermeneutics and legal authority. In the *Mukhtaṣar*, 'Alī b. Muḥammad highlights the importance of seeking religious guidances from the Imams. In doing so, he refutes what he sees as the dubious and flawed theories of legal interpretations adopted by the Sunnis. 'Alī b. Muḥammad lists four groups of people and explains their positions and approaches vis-à-vis Prophetic statements. They are Ḥashwiyya, Mu'tazilites, heretics and the People of Truth and Sound Beliefs (*Ahl al-ḥaqq wa-l-ḥaqīqa*, i.e. the Isma'ilis). The divine authority of the Imams and the successorship of the *dā'is*, Rajani demonstrates, are central to 'Alī b. Muḥammad's arguments.

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Conventions

We have adopted the transliteration format of the third edition of *The Encyclopaedia of Islam* with occasional deviations. For example, the affixed masculine pronoun is transliterated without diacritics, so it is “*kitābihi*”, not “*kitābihi*”; “*fihi*”, not “*fihi*”. The popular names of places are rendered in their anglicised forms (e.g., Medina for Madīna, Yemen for Yaman), unless they appear in Arabic passages. Transliterated words are italicised, except for proper nouns and some popular words that are used widely in English (e.g., *hadith* not *ḥadīth*, Shi'a not *Shī'a*, Isma'ili not *Ismā'īlī*, Zaydi not *Zaydī*, Sunni not *Sunnī*). The names that are common both in Persian and Arabic, we have rendered in Arabic transliteration (e.g., Muṣliḥ not *Muṣleḥ*, masjīd not *masjed* but Ketāb-khāneh not *Kitābkhānih*). The dates are given according to the Gregorian calendar, unless two dates are mentioned, in which case the Muslim Hijri year is given first, followed by the equivalent Common Era date with a slash punctuation between them. Solar Islamic calendar (Shamsi) is marked with the abbreviation Sh. In reference to the bibliographical information of the sources used by the contributors, we have rendered minimum information in the endnotes followed by its detail description in the dedicated ‘bibliography’ section at the end of each chapter.

Abbreviations

BSOAS	<i>Bulletin of the School of Oriental and African Studies</i>
EI2	<i>Encyclopaedia of Islam</i> , 2nd edition
EI3	<i>Encyclopaedia of Islam</i> , 3rd edition
EIR	<i>Encyclopaedia Iranica</i>
EIS	<i>Encyclopaedia Islamica</i>
IJMES	<i>International Journal of Middle East Studies</i>
ILS	<i>Islamic Law and Society</i>
JAOS	<i>Journal of the American Oriental Society</i>
JQS	<i>Journal of Qur'anic Studies</i>
SI	<i>Studia Islamica</i>
SSR	<i>Shii Studies Review</i>

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CHAPTER 1

Are Rulings of the Prophet Due to *Ijtihād* and Are all *Mujtahids* Always Correct? A Chapter from the *Sharḥ Zubdat al-uṣūl* of al-Māzandarānī (d. 1081/1670)

Robert Gleave

Introduction

Muḥammad Ṣāliḥ b. Aḥmad al-Māzandarānī (d. 1081/1670, hereon Māzandarānī), the author of this text, was a leading scholar in the mid Safavid period, living in Isfahan.¹ He was linked by both marriage and education to the major scholars of the period. Prime amongst his teachers was famous court theologian, Muḥammad Taqī al-Majlisī (d. 1070/1659), known as “the First Majlisī” (hereon Majlisī I), and it was Majlisī I’s eldest daughter, Āmina Begum, whom he married. Māzandarānī also studied with his brother-in-law, Majlisī I’s most famous son, Muḥammad Bāqir al-Majlisī (d. 1111/1699), known as the “Second Majlisī” (hereon Majlisī II), – either as tutor or a pupil depending on the source. Not so much is recorded about his life; he travelled to Isfahan from his hometown, presumably from the south Caspian littoral area given his name, studied under some of the leading scholars of the day; was noted for his knowledge of hadith and *uṣūl*. Some of the stories surrounding his behaviour may be fabulous, but they do, most likely, reflect aspects of his professional life. He was, by all accounts, very poor when he arrived in Isfahan, and (using a common trope) strove to maintain a certain asceticism throughout his life. According to one account, his father sent him to Isfahan because he was no longer able to support him; as a young student he dressed in rags and was embarrassed to join the classes in the *madrasa* (seminary) of Majlisī I. He used to sit outside the *madrasa*, listening to the teaching and discussions inside, making his notes on bark and bones since he could not afford paper. One day, Majlisī I was presented with a particularly difficult legal problem which he struggled to solve, and for three days he and his students struggled to find an answer. One of the students noticed that within Māzandarānī’s notes could be found the solution; taking the solution to Majlisī I’s class he presented it as his own. The teacher was amazed with the solution but did not believe it to be the student’s own work. The student eventually admitted it was that of Māzandarānī, and Majlisī I promptly demanded he be brought in to join the class. Majlisī I bought him new clothes, and eventually gave him his eldest daughter (i.e. Āmina Begum, the famous Safavid scholar, in marriage. Numerous other similar stories reflect the image of Māzandarānī as indigent, and entirely focussed on learning (even to the point of leaving his wife on his wedding night to complete some of his studies).

There is some debate over whether Māzandarānī can be counted as an Akhbārī or an Uṣūlī. Whilst he certainly does not display the virulent condemnation of *ijtihād* (and *uṣūl al-fiqh* more generally) in his writings, he does display some elements of Akhbārī legal reasoning around the “correct” methodology for Qur’anic interpretation and the probative force of the Imams’ reports. His close association, as both pupil and teacher, with figures associated with the Akhbārī trend

such as Majlisī I indicate an acceptance of certain forms of Akhbārism as acceptable, at least, and even supportable.²

His major literary output is in the form of commentaries on some of the classic works of Shi'ism. He wrote commentaries and marginal notes on the *uṣūl* section of al-Kulaynī's (d. 329/941) hadith collection (*al-Kāfī fī 'ilm al-dīn*), on the famous ode to the Prophet Muḥammad (*Qaṣīdat al-Burda*), and on works of legal theory (*uṣūl al-fiqh*). Two commentaries on *uṣūl* works stand out: his famous commentary on al-Ḥasan b. al-Shahīd al-Thānī's (d. 1011/1602) classic seminary text, *Ma'ālim al-uṣūl*, and a commentary on the *Zubdat al-uṣūl* of one of his teachers, Bahā' al-Dīn Muḥammad b. Ḥusayn al-ʿĀmilī, usually referred to as al-Shaykh al-Bahā'ī (d. 1030/1620 or 1031/1621). These commentaries are mostly titled *sharḥ* (i.e. *Sharḥ Uṣūl al-kāfī*, *Sharḥ Ma'ālim al-uṣūl* etc.). It is from his commentary on the *Zubda* (titled *Sharḥ Zubdat al-uṣūl*, which to my knowledge has not, to date, been edited) that the edited text presented below (together with a summary account) has been taken.

The *Zubda*, in a style typical of many postclassical abbreviated works of *uṣūl*, references concepts and examples by keywords. The meaning is hardly ever explained in full, indicating that the text really exists to be explicated by a teacher, discussed in class, and commented on, when appropriate, in writing. This is what Māzandarānī does in his commentary on the *Zubda*. The commentary is in the *mamzūj* or *mazjī* style (literally a “blended” commentary) in which the words in the base text (in this case the *Zubda*) are quoted in small chunks, with the commentator composing text to be inserted between the chunks in such a way that the grammatical structure remains sound. The result is a new integrated composition of base text and commentary. It is perfectly possible that al-Shaykh al-Bahā'ī purposely designed his base text (with its extreme brevity and keyword referential style), in this way to facilitate an integrated, *mazjī* style commentary, as found in Māzandarānī's work summarised below. Certainly, the intention of such abbreviated works (in *fiqh*, *uṣūl* or any other of the religious disciplines) was to promote memorisation of the text as well as to prompt commentary and explication.

The text deals with two linked *uṣūl* issues taken from the chapter on “personal juristic reasoning” (*ijtihād*). Both are canonical within the *uṣūl* tradition, in the sense that nearly all classical (i.e. post 5th/11th century) works of *uṣūl* period will deal with one or both of these issues.³ The first is the issue of the *ijtihād* of the Prophet: can we say that the Prophet Muḥammad carried out *ijtihād* or did the rulings he declared come out of revelation? The issue is problematic for various theological and legal reasons laid out below. The second issue concerns the doctrine that all those who carry out personal juristic reasoning (*mujtahids*) are “right” (*muṣīb*). This doctrine (known as *taṣwīb*) was controversial and in the *Zubda*, al-Shaykh al-Bahā'ī demonstrates that it is false, arguing instead that only one of the *mujtahids* can be right and the others, however meritorious their juristic effort may have been, are wrong. The discussions come at the beginning of the section (*faṣl*) of the *Zubda* which deals with *ijtihād* and the duty to follow the *mujtahid* (*taqlīd*), just after al-Shaykh al-Bahā'ī had given a short definition of the terms *ijtihād* and *taqlīd* which Māzandarānī in his commentary subjects to discrete analysis, as can be seen in the passage presented below.

Manuscript Sources

The *Sharḥ Zubdat al-uṣūl* of Māzandarānī is a well-copied work; there are numerous manuscripts available in the libraries of Iraq, Iran, India and elsewhere. I have retrieved references to 28 copies, but there are surely many more. The manuscripts used in this edition (with their abbreviation used in the footnotes of the edition) are listed below, together with folio or page number (as used and marked by the cataloguist/librarian):

KG1: Kashif al-Ghiṭā' Library, Najaf, no. 1370 (copy dated 1130/1717–18, pp. 418–420)

KG2: Kashif al-Ghiṭā' Library, Najaf, no. 1189 (copy dated 1328/1910–11, pp. 336–341)

The Kashif al-Ghiṭā' Library manuscripts were retrieved from the image collection published by the library titled and published on a series of 72 CDs.

M1: Majlis-e Shūrā-ye Islāmī Library, Tehran, no. 2707 (copy dated 1103/1691–92, fols. 196r–198v)

M2: Majlis-e Shūrā-ye Islāmī Library, Tehran, no. 1170 (copy dated 1183/1769–70, pp. 272–276)

M3: Majlis-e Shūrā-ye Islāmī Library, Tehran, no. 4292 (copy dated 1235/1819–20, fols. 136r–138r)

M4: Majlis-e Shūrā-ye Islāmī Library, Tehran, no. 3861 (copy dated 1308/1890–91, pp. 440–447)⁴

فروع من

في الفروع بنوق على صحة اجتهاد المجري ومسئلة تجزي الاجتهاد وصحة هذا الاجتهاد
بنوق على جواز المجري الجواب ما نشأ اليه بقوله ونوه الدور بطل اذا الاجتهاد
المختلفة مجزبة هو الاجتهاد في الفروع دون الاصول فصح الاجتهاد في تلك المسئلة لا يثبت
على جواز تجزي الاجتهاد في الفروع ولا على جواز مجزبه في الاصول ولا دور فضل احكام
النبي صلى الله عليه واله الا احكام الشريعة الدينية الدينية انما لبيت عن اجتهاد باجماعنا
وهذا لا يفي ابو جعفر والحاجي الى انهم كان منعبا بالاجتهاد فيما لا نص فيه
انهم قد اختلفوا في بعض بطلان ولكن بنسبة فيرجع لنا ان الاجتهاد قول بالراي والقول
بالراي قول بالمجوي وهو بطلان النسبة اليهم وما ينطق عن المجوي ^{هو الحق} عن المجوي ^{هو الحق} ان هو قد
يوشي وهو ظاهر في ان كل ما ينطق به هو دعي وهو يفي الاجتهاد ولا يثبت قول بالراي قبل
لانهم انهم قول بالراي يجوز ان يكون منعبا به بالمجوي فيكون الحق في المجوي لا عن الراي
والجواب المجوي اليه ان يجزئ لا يجعل ما ينطق به اي بالاجتهاد وجبا كاجتهادنا
بقوله نفسه فاعني واما ما بالعبود من الاصل الى الفرع وهو الاجتهاد مع انه لا يجعل هذا
ما ينطق به وجبا وانما تجزي بان هذا انما هو بطر في الالتزام والاعتناء عندنا بغيره
لما روي عنه بعضه فاحكامه فطعن بالاجتهاد في الاثر الكذب وهو منقلا
لذلك وهذا اي الدليل الاجري بغيره سائر المعصومين سلام الله عليهم فيدل على ان حكمهم
انهم فطعن بالاجتهاد في اجتماع الحقون بوجوه الاول قوله نعم عني الله عنك لم اذنت
لهم اي لا اراي عاينه على حكم ونسب الى الخطاء ومثل ذلك لا يكون فيما علمه المجوي فيكون
فيما علم بالاجتهاد والنسبة قوله نعم وشاورهم في الامر ومثل ذلك لا يكون الا فيما يحكمه فيه
بطر في الاجتهاد والمصنف اساء الى الجواب الاول بقوله وايضا العفو نطقه ورعه كرحم الله
مذيقه النطق والواقعة وشاور الى الجواب عما بقوله وهي اي اية العفو وايضا المشاورة ورا

عز الخطاء

بالاجتهاد فيما لا نقل فيه ثم اضم قد اختلفوا فقال بعضهم انه لا يخطئ في الاجتهاد
 وقال بعضهم انه يخطئ ولكن ينبت في جميع عنه لنا ان الاجتهاد قول بالراي
 والقول بالراي قول بالهوى وهو بطلان بالنسبة اليه بقوله ثم وما ينطق
 عن الهوى اي عن الراي ان هو الا وحى يوحى وهو طمأنينة كل ما ينطق
 به فهو عن وحى وهو ينفي الاجتهاد ولنا قول بالراي في قول لا ثم انه قول بالراي
 لم يوزن ان يكون متعبدا به بالوحى فيكون المنطق به عن الوحى لا عن الراي
 والجواب الواضح انه لا يجعل ما ينطق به رايا بالاجتهاد وحيا كاجتهاد
 بقوله ثم فاعتبروا امرنا بالعبر من الاصل الى الفرع وهو الاجتهاد ومع انه
 يجعل هذا ما ينطق به وحيا وانما خبر بان هذا انه هو بطريق الانعام والا
 فالاعتبار عندنا بمعنى الاتفاظ لما مر ولعله به خصته فاحكامه مده قطعية
 للاجتهاد بغيره والنزاهة ان الكذب وهو منافى لذلك وهذا اي الدليل
 الاخير في ما يراى المعصومين عم اجمعين فيدل على ان احكامهم ايضا قطعية
 للاجتهاد بغيره احيى المحالون بوجه الاول قوله ثم على الله عندكم لما انت
 لهم اي للاسارى عاتبة على حكمه ونسبة الى الخطأ ومثل ذلك لا يكون
 فيما علم بالوحى فيكون فيما علم بالاجتهاد والثاني قوله ثم وشاءوا في الامر
 ومثل ذلك لا يكون الا فيما علم فيه بطريق الاجتهاد والمهمة انما هي الجواب
 عن الاول بقوله وايتى العفو للطف واداة كرم حيث الله ان القائل به قد يقصد
 التلطف والاداة واسناد ذلك الجواب عنها بقوله وحى اي ايتى العفو وايتى
 المساورة وردت ايتى المساورة فالمسألة الى الدنيا كان النبي ص مقبلا اليه فيها و
 بطل قطعا الثاني قوله معين الصحابته بالتمتع لاختلاف عنهم لو استقبلت من امرى
 ما استبدت لما سقت الهدى وسوق الهدى حكم شرعى اي لو علمت
 او لا ما علمت اخرا لما فعلت ومثل ذلك لا يستقيم الا فيما كان بالاجتهاد
 والجواب التخييل لان سوق الهدى ثم المحال فضل التمتع ممكن كتاسف عم
 لعدم ادراكه الا فضل بسبب احتيا وسوق الهدى الواجب قوله ثم

زبدة الأصول

الشيخ بهاء الدين محمد بن الحسين بن عبد الصمد الحارثي الهمداني العاملي الجبلي م 31-1030هـ

فصل

[a] أحكام النبي (صلى الله عليه وآله) ليست عن اجتهاد:

[a.1] بإجماعنا،

[a.2] ولقوله تعالى: ¹﴿وَمَا يَنْطِقُ عَنِ الْهَوَىٰ - إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ﴾² والوحي إليه أن يجتهد لا يجعل ما ينطق

به وحياً، كاجتهادنا بقوله تعالى: ³﴿فَاعْتَبِرُوا﴾،

[a.3] ولعله (صلى الله عليه وآله) بعصمته عن الخطأ فأحكامه قطعية لا اجتهادية.

[b] وهذا يعم سائر المعصومين سلام الله عليهم أجمعين.

[c]

[c.1] وآية العفو تُلطّف كرحمك الله.

[c.2] وهي آية المشاورة في غير المسائل الدينية، وإلا كان مقلدا لهم. ومنع⁴ كون الإذن حكماً شرعياً.

[c.3] والتخير أولاً في سوق الهدى، ثم إيجاء فضل التمتع ممكن.

[c.4] وكذا سرعة الوحي باستثناء الإذخر، وليس أبعد من سرعة الاجتهاد، وسبق سماع العباس استثناءه منه

(صلى الله عليه وآله) محتمل.

[c.5] ورب فضيلة ترك لما فوقها أو لغرض كحسم قولهم: لو كان وحي لما اجتهد، كما حسم بالأمية طعنهم بالنقل

من الكتب.

1 The phrase ولقوله تعالى is not cited in the commentary manuscripts (though all MSs apart from KG1 introduce the Qur'anic quote with ولقوله تعالى; the phrase is subject to a minor manuscript variant in the printed edition of the *Zubdat al-uṣūl* rather than ولقوله تعالى see Bahā' al-Dīn al-Āmilī, *Zubdat al-uṣūl* (Qum, 1423/2002), p. 210, n. 1).

2 Qur'an 53:3-4.

3 Qur'an 59:2.

4 ومنع is subject to a minor manuscript variant (ومنع) in the printed edition (see Bahā' al-Dīn al-Āmilī, *Zubdat al-uṣūl*, p. 210, n. 6). Apart from KG1 all MSs of the commentary used here do not cite this passage from the *Zubda* at all, and hence offer no commentary; KG1 cites it (in the margin due to it being omitted in the first copy, and uses ومنع – i.e. the variant rejected by editor Gulbāghī, but used by editor Karīm), though no commentarial remark is given.

Commentary

Māzandarānī, commenting on the *Zubdat al-uṣūl* of one of his teachers, al-Shaykh al-Bahā'ī, produces a *majzī*, or integrated commentary – a sort of compound work of the base text and commentary. However, it is, perhaps, worthy viewing the base text in isolation to illustrate the referential nature of the style adopted by al-Shaykh al-Bahā'ī. It is clear from the translation below, and the text cited in full opposite, the text is composed in order to encourage elucidation and commentary.

Here is an attempted translation of the base text from the *Zubdat al-uṣūl*, staying as close to the Arabic as possible, but with some unavoidable insertions in order for the English to make sense.

Chapter

[a] The rulings of the Prophet do not originate in his personal juristic reasoning based [on the following proofs]:

[a.1] there is our [i.e. Twelver Shi'ī scholars] consensus (*ijmā'*);

[a.2] [there is also] God's statement "he does not speak from his own whim; it is nothing but revelation revealed".⁵ [Even if] the revelation to him [mentioned in this means] he should perform juristic reasoning, then this does not mean that whatever he says on account of this [juristic reasoning] can be classed as revelation; just as our juristic reasoning [is not revelation, just because] it is based on God's statement, "So consider";⁶

[a.3] it is supported by the fact that he knew he was immune from making a mistake, so his rulings are certain and not based on personal juristic reasoning.

[b] This conclusion can be applied to the rest of the Sinless Ones (may God's peace be upon them [a reference to the 12 Imams]) as well.

[c Arguments and rebuttals]

[c.1] The "Forgiveness Verse" is simply politeness – like the saying "God have mercy on you".

[c.2] It [i.e. the "Forgiveness Verse"] and the "Consultation Verse" apply to non-religious matters. If this were not the case, then [in the case of the "Consultation Verse"] the Prophet would be a follower of [the people with whom he consults]. Also [with respect to the "Forgiveness Verse"] we deny that the [Prophet's] permission [to some to remain] was a legal ruling.

[c.3] It is possible that there was choice at first in bringing along your sacrifice [to the pilgrimage], but then it was revealed that the "pleasure pilgrimage" was commendable.

[c.4] In the same way, it is possible that revelation came straight away in relation to the case of the reeds – and [spontaneous revelation] is not more unlikely than spontaneous personal juristic reasoning, and it is probably the case that al-'Abbās heard the exception [from the Prophet] at some earlier point.

[c.5] [Finally] sometimes, a meritorious act can be abandoned for something which is superior; or for some reason or other, such as to shut down the argument [of the unbelievers] that "if it was revelation, then he cannot be doing personal juristic reasoning". For instance, God shut down their insult that [the Prophet] was simply transmitting from books by pointing out that he was, in fact, illiterate.

Bold text is the base text, the *Zubdat al-uṣūl* of al-Shaykh al-Bahā'ī; the remainder is Māzandarānī's commentary. Section markers in **bold** lower-case letters and numbers ([a], [a.1] etc.) refer to passages in the *Zubdat al-uṣūl* (as per above); Western Arabic numerals ([1], [2] etc.) mark sections in the *Sharḥ Zubdat al-uṣūl*.

شرح زبدة الأصول

محمد صالح بن أحمد بن شمس الدين السروي المازندراني م 1081 هـ

[1][a] فصل⁵ أحكام النبي ص المراد بها الأحكام الشرعية⁶ الدينية لا الدنيوية أيضاً ليست عن اجتهاد [1.a]

بإجماعنا

[2] ذهب الشافعي وأبو يوسف والحاجي⁷ إلى أنه ع كان متعبداً بالاجتهاد فيما لا نص فيه، ثم إنهم قد اختلفوا فقال بعضهم: إنه لا يخطئ في الاجتهاد. وقال⁸ بعضهم: إنه⁹ يخطئ ولكن¹¹ ينبه فيرجع عنه. لنا: أن¹² الاجتهاد قول بالرأي والقول بالرأي قول بالهوى.

[3] وهو باطل بالنسبة إليه ع بقوله تعالى: ¹³ [2.a] ﴿وَمَا يَنْطِقُ عَنِ الْهَوَىٰ﴾¹⁴ أي عن الرأي¹⁵ ﴿إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ﴾¹⁶ وهو ظاهر في أن كل ما ينطق به فهو¹⁷ عن¹⁸ وحى، وهو¹⁹ ينفي الاجتهاد لأنه²⁰ قول بالرأي. [4] قيل: لا نسلم أنه قول بالرأي لجواز أن يكون متعبداً به بالوحى فيكون النطق به عن الوحى لا عن الرأي.

5 KG1: فصل في

6 M3: الشرعية الفرعية الدينية

7 M1: حاجي

8 M3 missing وقال في الاجتهاد

9 M3: لا بعضهم

10 KG1 missing إنه بعضهم وقال في الاجتهاد

11 M3: ولكنه

12 M1 missing أن

لقوله M4: بقوله; KG1 missing

14 Qur'an 53:3.

15 KG1: أي عن هوى النفسه

16 Qur'an 53:4.

17 KG1: وهو

18 KG1 missing عن

19 M2: فهو

20 KG1, M1: ولأن

The referential style is clear from the above translation – however, al-Shaykh al-Bahā'ī has a clear approach to his exposition of the issue of whether the Prophet performed *ijtihād* and whether the rulings he pronounced can be treated as fallible (given the common understanding of *ijtihād*). His view is that the Prophet's rulings were not from *ijtihād* [a], there are numerous pieces of evidence for this [a.1-a.3], that this conclusion applies to the Imams as well [b] and the contrary evidence (put forward by those who believe the Prophet's ruling are based on *ijtihād*) can be dissected and rejected one by one [c.1-c.5].

Māzandarānī's task in his commentary is to make al-Shaykh al-Bahā'ī's passage fully comprehensible by, in part, giving additional contextual information and by explaining the keyword references ("the Forgiveness Verse", "The Consultation Verse" etc.). More precisely, though, the commentarial process acts to tie down the intended meaning of the original author, and this is clear from the very outset with the words "[1] The Prophet's rulings – the intended meaning of which (*al-murād bihā*) is religious legal rulings, and does not include worldly rulings – are not from *ijtihād* by our consensus (*ijmā'*)". This is a potentially controversial point: is the intended meaning of al-Shaykh al-Bahā'ī's phrase "the Prophet's rulings" necessarily religious legal rulings (*al-aḥkām al-shar'iyya al-dīniyya*) and not practical worldly rulings (*al-aḥkām al-dunyawiyya*)? It is not obvious from the text itself, though it does appear to be the standard Twelver position. Māzandarānī is, then, ensuring that an ambiguous (and hence potentially disruptive) phrase in the base text is fully in harmony with Twelver doctrine. That the Prophet's *religious legal rulings* do not derive from his *ijtihād* is now subject to the consensus (*ijmā'*) of the community – the integrated commentary serves to specify what element is subject to consensus (namely, the non-*ijtihād* origin of the Prophet's religious legal rulings, but not his worldly practical rulings).

[2] outlines the different opinions on this matter. That the Prophet followed his own *ijtihād* when there was no text is the position of al-Shāfi'ī (i.e. Muḥammad b. Idrīs, d. 204/820, and by implication the school he founded), the early Ḥanafī authority Abū Yūsuf (d. 181/798, and hence at least some Ḥanafīs) and the Mālikī Ibn al-Ḥajīb (d. 646/1249, referred to here as al-Ḥajībī). This then constitutes the three principal schools with which Twelver legal writers are most concerned – the Ḥanbalī school is accepted as a school, but not viewed as having distinctive opinions such that it deserves constant mention when outlining the difference of opinion (*ikhtilāf*) on an issue. These three then differ amongst themselves with some saying the Prophet does *ijtihād* but never erred; others saying he did err, but this was always pointed out to him, and he recanted his earlier position.

[3] outlines the Twelver opinion (and, in his presentation, that of Māzandarānī also) on the matter. *Ijtihād* is, by definition a view based on an opinion; an opinion-based view (*al-qawl bi-l-ra'y*) is really a whimsical view (*'an al-hawā'*): "such a view would be invalid when applied to [the Prophet] for as God says, "he does not speak from his whim. It is in fact nothing but revelation revealed."⁷ Everything the Prophet says is, therefore, revelation, and this is to be contrasted with *ijtihād* – the results of *ijtihād* are personal opinions.

[4] deals with a potential objection here: not all results of *ijtihāds* are "personal opinions". In the case of Prophet, it is argued, he is not simply declaring the results of his own *ijtihād* because he believes in the power of his own opinion (*al-qawl bi-l-ra'y*). The Qur'anic verse demonstrates that when the Prophet announces his *ijtihād*-based view, the result is "revelation revealed".⁸ The announcement itself becomes a revelatory statement, whilst at the same time being the result of the Prophet's personal *ijtihād*. Therefore (it is inferred), not all *ijtihād*-based opinions are whimsical personal opinions.

[5] والجواب: الوحي إليه أن يجتهد لا يجعل ما ينطق به أي بالاجتهاد وحياً كاجتهادنا بقوله تعالى: ﴿فَاعْتَبِرُوا﴾²² أمرنا²³ بالعبور من الأصل إلى الفرع وهو الاجتهاد مع أنه لا²⁴ يجعل هذا ما ننطق²⁵ به وحياً، وأنت خير بأن هذا إنما هو بطريق الإلزام وإلا فلا اعتبار²⁶ عندنا بمعنى الاعتراض²⁷ لما مرّ.

[6] و [3.a]²⁸ ولعله ص بعصمته عن الخطأ²⁹ فأحكامه قطعية لا³⁰ اجتهادية وإلا لزم جواز الكذب، وهو مناف لذلك.

[7] [b] وهذا أي الدليل الأخير يعم سائر المعصومين سلام الله عليهم أجمعين فيدل على أن أحكامهم³¹ أيضاً قطعية لا اجتهادية.

[8] احتج المخالفون بوجه:

[9] الأول: قوله تعالى: ﴿عَفَا اللَّهُ عَنْكَ لِمَ أَذِنْتَ لَهُمْ﴾³³ أي الأسارى،³⁴ عاتبه³⁵ على³⁶ أن³⁷ حكمه ونسبه إلى الخطأ، ومثل³⁸ ذلك لا يكون فيما علم بالوحي فيكون فيما علم بالاجتهاد.

[10] والثاني: قوله تعالى: ﴿وَشَاوَرَهُمْ فِي الْأَمْرِ﴾⁴⁰.

[11] ومثل ذلك لا يكون إلا فيما يحكم⁴¹ فيه بطريق الاجتهاد، والمصنف أشار إلى الجواب عن الأول بقوله: [1.c] وآية العفو تُلطّف والرأفة،⁴² كرحمك الله إذ القائل به قد يقصد التلطف والرأفة.

[12] وأشار⁴³ إلى الجواب عنهما بقوله: [2.c] وهي أي آية العفو وآية المشاورة وردتا في غير المسائل الدينية فلا يردان على من خص⁴⁴ المنع بها وإلا أي وإن وردت⁴⁵ آية المشاورة في المسائل الدينية كان النبي ص مقلدا لهم فيها وهو⁴⁶ باطل قطعاً.

[13] الثالث: قوله⁴⁷ ع حين أمر⁴⁸ الصحابة⁴⁹ بالتمتع لتخلفه عنهم: «لو⁵⁰ استقبلت من أمري ما استدبرت لما سقت⁵¹ الهلدى». وسوق الهلدى حكم شرعي أي لو⁵³ علمت أولاً ما علمت آخراً لما فعلت، ومثل ذلك لا يستقيم

21 M3: لقوله

22 Qur'an 59:2.

23 M3: فإنه أمرنا

24 KG2 missing لا

25 M1, M3, M4: ينطق

26 KG2: والاعتبار

27 KG2: الالفاظ

28 M4 missing و

29 KG2, M1, M2, M3, M4 missing عن الخطأ

30 M1: الاجتهادية

31 M3: عليه أي أن أحكامهم

32 M1, M2: وقوله

33 Qur'an 9:43.

34 M4: لاسارى

35 KG2, M1: عاتبه

36 M2: وعلى

37 M4 missing أن

38 M1: مثلي

39 KG2, M2, M3, M4: الثاني

40 Qur'an 3:159.

41 KG2: يحكم M4: رأفة

42 KG1: ورحمة

43 M2 missing وأشار

44 KG1: خصص

45 M3 missing وردت

46 KG2: هو

47 M1: وقوله

48 M1: الأمر

49 M1, M2, M3, M4: أصحابه

50 KG1: و

51 سبقت الهلدى M3: سقطت

52 سنن أبي داود ج 2 ص 771

53 KG1: حكم شرعي أو

[5] outlines the response to this argument – Māzandarānī puts forward an *ad absurdum* argument: if one argues this way, one could say everyone's *ijtihād* is revelation since the permission to do that is also based on a revelatory command – namely, the statement in the Qur'an "Consider".⁹ By this imperative, it could be argued, God orders us (*amaranā*) to practise *ijtihād*: that is, to move from one case to another, or from a general principle to a specific application of that principle. However, at no point do the conclusions we enunciate become revelation. For Māzandarānī, even though this argument is in support of his position, he recognises a potential flaw in it: it is dependent on us understanding the imperative "Consider" to be one which requires obligation, and as he has demonstrated, the imperative can have many meanings. In this verse the imperative form means, in his view, that one should view the action being commanded as "advised" (*itti'āz*).

[6] outlines a third argument for the Twelver position: the Prophet knows himself to be immune from error, so his rulings are certain to him, not based on his juristic reasoning (*qaṭ'iyya lā ijtihādiyya*). The argument here can be rolled out to all the Sinless Ones [7], i.e. the Imams.

Section [8] begins the opposition arguments and their rebuttals. Māzandarānī groups the first two pieces of evidence from the opposition [9 and 10], and then gives responses to them both [11 and 12] – I will take the argument and response for each together here. First, [9] they claim that God says, "God forgive you – why did you give them permission?"¹⁰ This is referred to as the "Forgiveness Verse" (*āyat al-afw*). If God here is forgiving the Prophet for something, then the Prophet must have made an error and not have acted due to revelation. The reply is given a little later in the passage [11] – this, Māzandarānī explains, is merely an instance of politeness, like when you say to someone "God have mercy on you": it does not mean the person is a serious sinner or has even gone astray. The second argument [10] relates to the "Consultation Verse": "so consult with them on the matter".¹¹ If the Prophet should consult the people in order to reach a decision, then he cannot be acting on the basis of revelation. Māzandarānī's explanation of al-Shaykh al-Bahā'ī's reply to this evidence [12] is that both this verse and the Verse of Forgiveness apply to worldly, not religious, matters (picking up on the point made in [1] above) – "they are not relevant [as a counter argument] for someone who restricts [their application] to [non-religious matters]". If they did apply to religious matters, then the Prophet would be following the people (*muqallad lahum*) in such matters, rather than acting on the basis of revelation – and this is "certainly invalid" (*bāṭil qaṭ'an*).

The third argument [13] is rather involved, and concerns an episode when the Prophet was on pilgrimage with the Companions; when he reached Mecca, he found out that not all the Companions had brought the requisite sacrifice (*hady*) with them for pilgrimage. He therefore told them to change the type of their pilgrimage. They were doing *hajj al-qirān* (combined pilgrimage) when the pilgrim does both the minor pilgrimage (*ʿumra*) and designated pilgrimage (*hajj*) in one state of pilgrimage purity (*iḥrām*). The Prophet said that because they had not brought a sacrifice, they should change this to *hajj al-tamattuʿ* (the so-called "pleasure" pilgrimage) – thereby changing the object of their intention mid-pilgrimage. In *hajj al-tamattuʿ*, the pilgrim completes the *ʿumra* and then leaves *iḥrām* for a while, and enters a second state of *iḥrām* in order to complete the *hajj*. Presumably during the non-*iḥrām* state, they could locate a sacrificial animal and therefore re-enter *iḥrām* with the correct prerequisites for *hajj*. The Prophet said, "If I had known my matter what I know now, then I would not have brought my sacrifice along with me." (*law istaqbaltu min amrī mā istadbartu la-mā suqtu l-hady*) – that is, if I had known the pilgrimage type was to change to *hajj al-tamattuʿ* I would not have needed to bring my sacrifice.¹² The fact he

إلا فيما كان⁵⁴ بالاجتهاد.

[14] والجواب: [3.c] التخيير أولاً في سوق الهدى، ثم إحياء فضل التمتع ممكن. فتأسف⁵⁵ ع لعدم⁵⁶ إدراك الأفضل بسبب⁵⁷ اختيار⁵⁸ سوق الهدى.

[15] الرابع: 59: قوله ع يوم فتح⁶⁰ مكة: 61: «لا يختل خلاها ولا يعضد شجرها، فقال العباس: إلا⁶² الإذخر، فقال ع: إلا⁶³ الإذخر». 64: ومعلوم أن الوحي لم ينزل عليه في تلك الساعة فكان الاستثناء بالاجتهاد.

[16] والجواب ما أشار إليه بقوله: [4.c] وكذا سرعة الوحي باستثناء الإذخر ممكن في تلك الساعة. 65: وليس سرعة الوحي فيها أبعد⁶⁶ من سرعة الإجتهد بل هو أقرب منه، 67: فالقول بإمكان الاجتهاد فيها دون الوحي تحكم. وسبق سماع العباس استثناء منه ع محتمل، فيحتمل⁶⁸ أن يكون ذلك الاستثناء مستنداً إلى وحي سابق، 69: فاندفع الاستبعاد في نزول الوحي في تلك الساعة.

[17] الخامس: إن العمل بالاجتهاد أشق من العمل بالوحي لاحتياجه إلى بذل الوسع في إتيان النفس، والأشق أفضل لقوله ص: «أفضل الأعمال أحزها»⁷⁰ أي أشقها، والأفضل⁷¹ لا يتركه ع وإلا لكان أمته أفضل منه في هذا الباب وإنه غير جائز.

[18] والجواب ما أشار إليه بقوله: [5.c] ورب فضيلة ترك لما فوقها كمن يترك⁷² ثواب الشهادة لكونه⁷³ حاكماً، وثواب التقليد لكونه مجتهداً، وفيه النظر⁷⁴ لأن المستدل على ما قرنا لم يدع⁷⁵ أن في العمل بالاجتهاد فضيلة بل ادعى أنه أفضل من العمل بالوحي.

[19] وهذا الجواب لا يدفعه. والأولى أن يجاب عنه بما أجاب به⁷⁶ العلامة وهو: أن المشقة إنما تؤثر⁷⁷ في زيادة⁷⁸ الفضيلة، والثواب لو كان ما اشتمل⁷⁹ عليها مطلوباً للشارع، وأما إذا لم يكن مطلوباً⁸⁰ له⁸¹ فلا. 82: ونحن نمنع من جواز الاجتهاد في حقه، على أننا⁸³ نمنع أن الاجتهاد أشق من الوحي لجواز أن يكون في الوحي⁸⁴ مشقة

54 KG1: كانت

55 KG1: فتعسف

56 M1: بعدم

57 M1 missing بسبب

58 M3: اعتبار

59 KG1 missing الرابع

60 M2: فتح في

61 KG2: يوم فم مكة

62 M2: ولا

63 KG2, M1, M2, M4 missing إلا

64 مسند الإمام أحمد بن حنبل ج 4 صص 133-134

65 M3: تلك الساعة مكان الاستثناء

66 KG2: بعد

67 M3 missing منه

68 KG1: ويحتمل

69 KG1: الوحي السابق M3: سابقاً

تفسير ابن القيم الجوزية المعروف بالتفسير القيم ص 80

71 M1: لأفضل

72 M1: ترك

73 KG1: حال كونه

74 KG1 missing نظره: وفيه النظر

75 M3: لا يدعي

76 KG1 missing به

77 M3: يؤثر

78 M3: نهاية

79 M1: كان مشتملاً

80 M3 missing مطلوباً

81 M1 missing له

82 تهذيب الوصول إلى علم الأصول ج 1 ص 284

83 KG1 missing من جواز الاجتهاد في حقه على أنا

84 M2 missing في الوحي

wished he had done differently, the opponents argue, means the first decision – which is a religious and not a worldly matter – cannot have been by revelation and must have been by *ijtihād*. The answer [14], explained by Māzandarānī, is that there may have been, at first, an option for the pilgrim to bring a sacrifice or to not bring one; then later it was revealed that it was better (*afḍal*) to perform *ḥajj al-tamattuʿ*. The Prophet was expressing regret: he had chosen to bring along his sacrifice when he did not know that it was better to perform *ḥajj al-tamattuʿ*.

The fourth argument [15] is less complex: on the day when the Prophet conquered Mecca he said that you should not uproot Mecca's grassland, or cut down its trees. Al-ʿAbbās said, "except for the reeds", and the Prophet agreed with this.¹³ By accepting this exception to the general prohibition on cutting down grasses and trees, the opponent argues that: "it is known that revelation did not come to him at that very moment; so the exception [of reeds] must have been from his own *ijtihād*," Māzandarānī's answer [16] is first, that immediate, or alacritous revelation of the exception is possible (*surʿat al-waḥy bi-l-istithnāʾ mumkin*), indeed it is more likely than alacritous *ijtihād*. The claim that alacritous *ijtihād* is possible but alacritous revelation is not is just arbitrary (*taḥakkum*). Second, it is probable that al-ʿAbbās had heard the exception on a previous occasion (*sabq samāʿ al-ʿAbbās*), so it did come from revelation after all.

The fifth argument [17] is that it is harder to perform *ijtihād* than to receive revelation. *Ijtiḥād* means exhausting all possible effort; whilst revelation is simply a passive receiving of information. There is a general rule that the harder something is, the greater its worthiness;¹⁴ if the Prophet did not perform *ijtihād* then his community (some of whom do perform it) would surpass him, which is, of course, not permitted. Al-Shaykh al-Bahāʾī's answer [18] is the condensed phrase "sometimes, a meritorious act can be abandoned for something which is superior". Māzandarānī explains this by examples: the judge forgoes the rewards of witnessing in a case, since the position of judge is more meritorious; similarly, the *mujtahid* forgoes the rewards of following (*taqlid*) a *mujtahid*. Interestingly, though, Māzandarānī does not think al-Shaykh al-Bahāʾī's answer is an effective rebuttal: "[the opponent] is not claiming simply that there is merit in acting on the basis of *ijtihād*; rather he is claiming that it is *more* meritorious than acting on the basis of revelation, and this response [of al-Shaykh al-Bahāʾī] does not rebut this." For Māzandarānī, a better way of arguing is following the line of reasoning laid out by al-ʿAllāma al-Ḥillī [19]: "hardship can only increase merit and reward when it is for something desired by the Lawgiver (*maṭlūban lil-shāriʿ*)."¹⁵ Māzandarānī denies that *ijtihād* is permitted to hold this position of *maṭlūban lil-shāriʿ*: by definition *ijtihād* is searching for something not explicitly expressed by the Lawgiver (since *ijtihād* is necessitated by the lack of an explicit text), and the result of *ijtihād* may be at variance with the desired result of the Lawgiver. If *ijtihād* is not *maṭlūban lil-shāriʿ*, then hardship cannot increase the merit gained from performing it. This is quite different from receiving revelation, which is, by definition in line with the Lawgiver's wishes. One is tempted to see an influx of Akhbārī ideas here into the argumentation: *ijtihād* may be permitted in certain circumstances, but its results are, by necessity, not identical with the Lawgiver's wishes. Furthermore, receiving revelation brings fear and dread (*al-khawf wa-l-khashya*) of God. This could actually make receiving revelation harder than doing *ijtihād*. Māzandarānī here, interestingly, is replacing and supplementing al-Shaykh al-Bahāʾī's argumentation as he feels dissatisfied with it.

زائدة⁸⁵ على ما في الاجتهاد بما يحصل⁸⁶ له ع من الخوف والخشية من الله تعالى⁸⁷ حال نزول الوحي عليه.
 [20] أو لغرض⁸⁸ عطف على قوله لما فوقها يعني رب فضيلة ترك⁸⁹ لغرض⁹⁰ من الأغراض.
 [21] كحسم قولهم أي قول الكفار بأنه لو كان له⁹¹ وحي لما اجتهد، وهذا نخل بمقصود⁹² البعثة كما حسم بالأمية⁹³ بعدم⁹⁴ التعلم⁹⁵ والكتابة، طعنهم بالنقل أي بنقله ما أتى به من الحكم والمصالح⁹⁶ من الكتب السابقة.⁹⁷

Māzandarānī continues [20] this notion with his final point with an extension of last point. One who is seeking a superior act can abandon it “for some other reason” [21] such as shutting down the argument of the unbelievers (*ḥasm qawlihim*) that if the Prophet is receiving revelation, then he is not doing *ijtihād*. The Prophet, then, could have done *ijtihād* if he wished, but he did not “for some other reason” – in this case his “other reason” was to prevent the unbelievers from arguing in this way. A similar argument is mentioned here concerning the doctrine of *ummiyya* (the Prophet’s illiteracy and lack of schooling): the Prophet could, obviously, have learned to read and write, but he did not “for some other reason”. In this case, the other reason was to shut down the unbelievers’ argument that he was simply repeating the ideas of books revealed previously to the Jews and Christians.

Endnotes

- 1 For his life and works see al-Khwānsārī, *Rawḍāt al-jannāt* (Qum, 1394/1974), v. 4, pp. 118–120; al-Tunikābunī, *Qīṣaṣ al-‘ulamā’* (Tehran, n.d), pp. 228–230; Āghā Buzurg al-Tīhrānī, *al-Dharī‘a ilā taṣānīf al-Shī‘a* (Beirut, 1403/1983), v. 13, p. 300; v. 14, p. 27; ‘Abbās al-Qummī, *al-Fawā’id al-Raḍāwiyya* (Qum, 1385Sh/1965), v. 2, p. 847.
- 2 Gleave, *Scripturalist Islam* (Leiden, 2007), pp. 239–241; pp. 263–264.
- 3 Weiss, *The Search for God’s Law* (Salt Lake City, 2010), pp. 682–685; pp. 690–697; Chaumont, “La problématique classique de l’ijtihād et la question de l’ijtihād du prophète: ijtihād, waḥy et ‘iṣma,” *SI* 75 (1992), pp. 105–139.
- 4 Descriptions of the Majlis-e Shūra-ye Islāmī (or Majlis-e Shūra-ye Milli) Library manuscripts can be found in the printed catalogue: Dirāyatī, *Fihrist-e Ketābkhāneh-ye Majlis-e Shūrā-ye Milli/Islāmī* M1: v. 9.1, p. 9; M2: v. 24.2, p. 164; M3: v. 11, p. 302; M4: v. 10.4, p. 1893).
- 5 Qur’an 53:3–4.
- 6 Qur’an 59:2.
- 7 Qur’an 53:3–4.
- 8 Qur’an 53:3–4.

85 KG1: فائدة

86 M1: يجعله

87 M1, M2, M4: سبحانه

88 KG1: العرض

89 M1: ترك

90 M3: الغرض

91 KG1 missing له

92 M3: لمقصود

93 KG1: الإمامية

94 M1, M2, M4: أي بعدم

95 M3: العلم

96 M1 missing والمصالح

97 M3, M4: السالفة

- 9 Qur'an 59:2.
- 10 Qur'an 9:43.
- 11 Qur'an 3:159.
- 12 Al-Sijistānī, *Sunan Abī Dāwūd* (Cairo, 1420/1999), v. 2, p. 771.
- 13 Aḥmad b. Ḥanbal, *Musnad al-Imām Aḥmad b. Hanbal* (Beirut, 1416/1995), v. 4, pp. 133–134.
- 14 Ibn Qayyim al-Jawziyya states that this report has no basis (*lā aṣl lahu*). See Ibn Qayyim al-Jawziyya, *Tafsīr al-Qur'ān al-Karīm/al-Tafsīr al-Qayyim* (Beirut, 1410/1989), p. 80.
- 15 Al-ʿAllāma al-Ḥillī, *Tahdhīb al-wuṣūl ilā ʿilm al-uṣūl* (London, 1421/2000), p. 284.

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CHAPTER 2

Refraining from Seeking Clarification: A Chapter from *al-Wāfī fī sharḥ al-Wāfiya* of al-A'rajī (d. 1227/1812)

Hadi Qazwini, Aun Hasan Ali, Yusuf Ünal

Introduction

Muḥsin b. al-Ḥasan b. Murtaḍā al-A'rajī (hereon A'rajī), known as al-Muḥaqqiq al-Kāzimī, belonged to a prominent family of Iraqi *sayyids* that traced its lineage back to 'Ubaydallāh al-A'raj ("the lame", d. 2nd/8th century), a grandson of 'Alī b. al-Ḥusayn Zayn al-'Ābidīn (d. 95/713). He was born in the 1130s/1710s in Baghdad, where he studied Arabic and worked as a merchant. After reaching the age of 30 (or 40), he moved to Najaf to pursue a religious education. He remained in Najaf until the appearance of the Bubonic plague in 1186/1772, when he (and many other scholars of Najaf) left and then returned after the plague subsided. He subsequently moved to the shrine city of al-Kāzimiyya north of Baghdad, where he lived and taught until his death in his 90s in 1227/1812. He was buried in a cemetery adjacent to the tombs of the Imams Mūsā al-Kāzim (d. 183/799) and Muḥammad al-Jawād (d. 220/835). His biographers portray him as exceptionally humble, devout, and ascetic. Like many of his scholarly peers, elaborate stories abound regarding his lifestyle and the events surrounding his life, many of which are based on dreams. In one dream, the ailing A'rajī is visited by the seventh Imam Mūsā al-Kāzim, who miraculously expels the illness out of his body. In another dream, A'rajī is in his humble home surrounded by luminaries of the Twelver tradition, highlighting his prominence. Together they walk out of his home and proceed toward the shrine of the Imams and onto the outskirts of the city with the intention of confronting Aḥmad b. Zayn al-Dīn al-Aḥsā'i (d. 1241/1826), the founder of the Shaykhī school. A'rajī's immediate family – including his wife al-'Alawiyya Hadiyya bt. 'Alī b. al-Murtaḍā, their daughter and four sons Kāzim, Ḥasan, Muḥammad, and 'Alī – is also said to have been extraordinarily pious, and his sons were scholars in their own right.

A'rajī lived through a tumultuous time. Safavid rule came to an end in Iran in 1135/1722 and the Ottomans' grip over Iraq was loosening in the 12th/18th century. Aside from these political changes, A'rajī lived through some of the most intense episodes of the Akhbārī-Uṣūlī conflict in the shrine cities of Najaf and Karbala. As an outstanding disciple of both Muḥammad Bāqir al-Bihbahānī (d. 1206/1791–2) (whom he refers to as *al-ustādh*) and Muḥammad Mahdī Baḥr al-'Ulūm (d. 1212/1797) (whom he refers to as *al-ustādh al-sharīf*), A'rajī is counted among the preeminent representatives of the Uṣūlī revival of the late 12th and early 13th/18th centuries. His students include over two dozen well-known Uṣūlī scholars. His literary output indicates that he participated in the intellectual attacks on the Akhbārīs. He composed a refutation of the legal principles of the most important representative of the Akhbārī school, Yūsuf al-Baḥrānī (d. 1186/1772), entitled *al-Radd 'alā muqaddimāt al-Ḥadā'iq*. He was a prolific author, producing several treatises, commentaries, and glosses in the fields of *kalām*, *fiqh*, *rijāl*, and *uṣūl al-fiqh*. He was also a talented poet. Most of his contributions, however, lie in the field of *uṣūl al-fiqh*. It is

said that, on his deathbed, he lamented his excessive focus on *uṣūl al-fiqh* at the expense of other disciplines. Among his major works in this field are *al-Mu'taṣim*, *al-Maḥṣūl fī 'ilm uṣūl al-fiqh* (which has been published), a marginal gloss on al-Fāḍil al-Tūnī's (d. 1071/1660) *al-Wāfiya*, and, finally, his famous commentary on *al-Wāfiya*, from which our excerpt is taken.

The full title of this work, as mentioned in the introduction, is *al-Wāfi fī sharḥ al-Wāfiya*. As noted, it is a commentary on al-Fāḍil al-Tūnī's *al-Wāfiya fī uṣūl al-fiqh*, which is the earliest Uṣūlī response to Muḥammad Amin al-Astarābādī's (d. 1036/1627) Akhbārī theses. Completed in 1059/1649, it appears to be al-Tūnī's only extant work. A'rajī began this commentary in the "year of the plague" in 1186/1772 and completed it a decade later in 1196/1782.

Two manuscripts were used for this edition. The first (referred to here as "KG") belongs to the Kāshif al-Ghiṭā' collection in Najaf (#644, pp. 148–152). It was copied by Muḥammad 'Alī b. Muḥammad Bāqir al-Iṣfahānī in 1207/1793. It appears to be one of the earliest copies produced during A'rajī's lifetime. Several other copies of this work are held in this and other collections. The second manuscript (referred to here as "M") is from the Majlis Library in Tehran (#7718, pp. 278–286), which was copied in 1263/1847 by Muḥammad Bāqir b. Ibrāhīm al-Najafābādī. The differences between the two manuscripts are minimal and have been noted in the footnotes of the Arabic text.

The excerpt under discussion is from the second chapter (*bāb*) of al-Tūnī's *al-Wāfiya*, which is about the universal and particular (*al-ʿāmm wa-l-khāṣṣ*). After defining the universal and adducing terms that indicate a universal meaning in the first discussion (*baḥṭh*) of this chapter, the author proceeds to the second investigation, which focuses on the following scenario: The Prophet/Imam is asked a legal question and, without requesting further clarification or details, he replies. In this case, does the fact that the Prophet/Imam did not seek further clarification or detail (*tark al-istifṣāl*) mean that his statement should be considered universal? In other words, does the report give rise to a universal legal directive? As we shall see, A'rajī presents a detailed discussion of several possibilities, drawing on the opinions of his Shi'i and non-Shi'i Uṣūlī predecessors, before providing his own detailed answer.¹ We have included the Arabic and English translation of al-Tūnī's entire discussion of the issue in *al-Wāfiya*, which precedes the text from A'rajī's commentary.

A'rajī divides his commentary of the discussion into nine sections, each beginning with "his statement" (*qawluhu*) and containing the first few words of the phrase.

فلم يهرس من الافتراض الصوري لا تنكره ولكن قل هل عقلنا ذلك الامن حيث انه لم يستفصل فلو لم تكن الماهية من حيث هي سببا لكان السبب ونوع منها لا يستفصل
وحي تنكر هذا مع العلم وقول من الجاهل ان يكون السبب هو النوع وانما لم يستفصل لعلمه لكن الانصاف بعد هذا ان الظاهر انما هو سببية الماهية دون نوع منها
وان كان عالما بالماهور عند الكل من انهم انما كان يعلم الناس بالظاهر يطلب من الماهية البينة ومن المنكر البين ومن المفترى الشهيد وان اعصتلك القضية والالزام
الابتلاء فكانا موهومين وخطائين ومجادون في كذا وذا من الناس بعضهم وبعض وانما ذاسعت احد يقول الحق افطرت فتقول له كرم فنتك في ان مطلق الافطار سبب
عنده والاسلام لا يلتفت الى احتمال ان يكون عالما بالخصوصية ولا ادخل من الظهور ونعم اذا وجدته ياكل مثلا فقال له كرم فصر على الخصوصية فان قلت او ليس من الجاهل
ان يكون راد ما علم بطريق عادي من طرق العلم وجاء اليه لسلوكه في العلم وهو لا يعلم ان قد علم به فامره بما يقتضيه ما علم من الخصومة دون مطلق
الماهية فلت مثل هذه الاحتمال البعيد لا يقدح في الظهور وبالحجة فالظن من الجواب تعلقه بالسؤال وكذا لكل ما لا يشاهد وان لم يسئل عنه كقصته ابن عجلان كان انظمت من
الامر الواردة عند مشاهدة الفعل انما هو بعلمه بخصوص المشاهدة لا الغدير المشترك بينهم وبين غيره هذا كله مصفا الى ما يلزم من التقرير بما جهل للعدوم ^{والغائب}
بل الحافز السائل كان التحقيق ما عليه لا كثرون من ان ترك الاستقصا لخاص بالعموم ولكن نترلنا وقلنا بتاثير العلم بالتحقيق ان نقول ما جاء من جواب من نحو
افعل كذا ان ظن من حاله عدم العلم كمال السائل كان يحكم له قصته جرت عليه وهو يتكشف مواضع الحقار منها وحسب حملة على العموم وان لم يظهر ذلك بل ظهر علمه بحال او
اجزا عليه ان يعلم احتمال كلا الامرين وكان عملا ولا يلزم من ذلك الغاء كثير من الخطابات كما قد يظن بل اعصاه انه خرج لا ينص حجة الخصم في حال النزاع واما نحن من
فعل كذا وجب عليه كذا او فعل كذا لموجب كذا فلا ينبغي ان يربنا في عموم سواء وقع جوابا للسؤال عما وقع او عن غيره مع العلم بالحال او مع الجهل قولك واختار الذي
العلامة لا يظهر منه اختياره على الاطلاق ولا في شيء من كتبه اما التهذيب فنجلان ذكر الضوائر مثل بحكاية ابن عجلان قال وفيه نظر لاحتمال علمه بالحال وهو ظاهر
في مقالة الرازي واما انهما تهذبا لهما ما نصه حمل على العموم ما علم او ظن انه لم يعلم ولا يمتنع الا اذا علم انه عالم وذلك مقالة اخرى وانتم مفصله يرجع حاصلها الى الحكم في

Figure 2.1 MS Kāshif al-Ghiṭāʾ, Najaf (#644), p. 150

ح

[illegible]

المشرك

الوافية في أصول الفقه
عبدالله بن محمد التوني، الفاضل التوني م 1071هـ

[a] البحث الثاني:

قيل: ترك الاستفصال في حكاية الحال مع قيام الاحتمال يُنزل منزلة العموم في المقال.

[a.1] وقيل: بل حكايات الأحوال إذا تطرق إليها الاحتمال كساها ثوب الإجمال وسقط بها الاستدلال، واختاره العلامة¹ في التهذيب.

[b] والحق أن يقال: إنه أقسام:

[b.1] الأول: أن يُسأل عن واقعة دخلت في الوجود، والنبي صلى الله عليه وآله وسلم أو الإمام عليه السلام مطلع عليها.

[b.2] والحق فيه: عدم اقتضاء العموم لأنّ الجواب ينصرف إلى الجهة الخاصّة للواقعة المخصوصة، ولا يتناول غيرها.

[b.3] الثاني: أن يُسأل عنها بعينها، مع احتمال اطلاعه عليه السلام على جهتها.

[b.4] والحق فيه: القول الثاني مع عدم مرجّح لأحد الاحتمالين.

[b.5] الثالث: أن يُسأل عن الواقعة لا باعتبار وقوعها.

[b.6] والحق فيه أن يقال: إنّ الواقعة إن كانت لها جهة شائعة تقع غالباً عليها فالجواب إنّما ينصرف إليها، فلا يُستدل به على غيرها. وإن كانت جهات وقوعها واحتمالاته متساوية لا مرجّح لشيء منها في عصرهم عليهم السلام فالظاهر العموم، إذ عدم الانصراف إلى شيء منها يوجب إلغاء الدليل، والصرف إلى البعض ترجيح بلا مرجّح، فينصرف إلى الكل. وهو معنى العموم.

[c] والظاهر من المرتضى رحمه الله في الذريعة القول بالعموم بترك الاستفصال، فإنّه قال: «إذا سُئل عليه السلام عن حكم المفطر، فلا يخلو جوابه من ثلاثة أقسام:

[c.1] إما أن يكون عام اللفظ، نحو أن يقول كل مفطر فعليه الكفارة.

[c.2] والقسم الثاني: أن يكون الجواب في المعنى عاماً، نحو أن يُسأل عليه السلام عن رجل أفطر فيدع الاستكشاف عمّا به أفطر ويقول عليه السلام عليه الكفارة، فكأنّه عليه السلام قال من أفطر فعليه الكفارة.

[c.4] والقسم الثالث: أن يكون السؤال خاصّاً والجواب مثله فيحل محل الفعل».

[d] فكلّامه يدل على أن ترك الاستكشاف بمنزلة العموم، إلّا أن مثاله في تنقيح المناط، والظاهر أنّه لا خلاف في العموم حينئذ، كما سيحييء في بحث الأدلة العقلية - إن شاء الله تعالى وتقدس -.

1 In some manuscripts of al-Tūnī's *al-Wāfiya* the sentence is واختار الأول العلامة, which is incorrect. The above sentence appears in a single manuscript and the editor of the published edition has chosen to include it in the text.

[a] The Second Discussion:

It is said that “refraining from seeking further clarification about the situation [related by the petitioner], despite the possibility [that it may concern a particular case], occupies the position of the universal in speech.”

[a.1] [On the other hand,] it is said that when a situation is presented and there exists the possibility [that it may concern a particular case], it is rendered ambiguous and thus cannot be employed for inference. This view was adopted by al-‘Allāma in *al-Tahdhīb*.

[b] In fact, it must be said that several possible scenarios exist:

[b.1] First: One asks about an incident that has actually occurred and the Prophet (peace and blessings be upon him and his family) or the Imam (peace be upon him) is aware of the [specificities of the] case.

[b.2] In this scenario, the answer does not entail universality. This is because the answer applies only to the particular case in question and excludes other cases.

[b.3] Second: One asks about an incident that has actually occurred and the Prophet (peace be upon him) might be aware of the specificities of the case.

[b.4] Here, the answer is rendered ambiguous and thus unemployable for inference if the possibility that the Prophet knows and the possibility that he does not know are equal.

[b.5] Third: One asks about an incident, however, not with reference to its occurrence.

[b.6] In this scenario, it depends. If the incident commonly occurs in a particular way, the answer only applies to that particular way and cannot be used for anything else. If all the ways in which the incident could have occurred are equally likely, and none of them was preponderant during the lifetime of the Prophet/Imams (peace be upon them), then *prima facie* the answer should be considered universal. This is because not applying to any of the ways in which the incident could have taken place renders the evidence null and applying to some and not others entails giving preference without a reason. Therefore, it applies to all the ways in which the incident could have taken place, which is what “universal” means.

[c] *Prima facie*, in *al-Dhari‘a*, al-Murtaḍā (may God have mercy on him) takes the position that refraining from seeking clarification entails universality.

Al-Murtaḍā said: “If the Prophet/Imam (peace be upon him) is asked about the ruling of one who broke his fast, his answer must fall under one of three possibilities:

[c.1] [First]: Either the wording of the answer is universal, such as if he were to say: ‘Offering expiation is incumbent upon anyone who breaks the fast’; or

[c.2] Second: the meaning of the answer is universal, such as if he (peace be upon him) were to be asked about a man who broke his fast and he did not ask how the man broke his fast, and said: ‘Offering expiation is incumbent upon him.’ It is as if he (peace be upon him) were to have said: ‘One who breaks his fast must offer expiation’; or

[c.4] Third: the question is particular and the answer is also particular, in which case the answer is treated as though it were the Prophet’s/Imam’s action.”

[d] Thus, what al-Murtaḍā said indicates that refraining from seeking clarification entails universality. However, the example he gives is actually an example of *tanqīḥ al-manāṭ* (honing in on the real basis for any particular law), in which case there is no disagreement over the answer being universal, as we will see in the discussion on rational proofs, God – the Exalted and the Holy – willing.

In what follows, **bold text** is the base text, *al-Wāfiya* of al-Fāḍil al-Tūnī; the remainder is al-A'rajī's commentary. Section markers in **bold lower-case letters and numbers** ([a], [a.1] etc.) refer to passages in *al-Wāfiya* (as per above); Western Arabic numerals ([1], [2] etc.) mark sections in *al-Wāfi*.

الوافي في شرح الوافية محسن بن الحسن بن مرتضى الأعرجي، المحقق الأعرجي م 1227هـ

- [1] قوله: [a] البحث الثاني: قيل: ترك الاستفصال... إلخ
الأصل في هذه المقالة على ما قيل هو الشافعي، وقد جرى عليها المحققون كالأجل المرتضى والغزالي وغيرهما من المتقدمين والمتأخرين، وظاهرهم الحكم بالعموم على الإطلاق.
- [2] والمراد بحكاية الحال ما يحكيه السائل من الحال الواقعة، كما يقول فلان² أفطر في رمضان، فيسأل³ عن إفطار خاص بلفظ عام، وبذلك يقوم⁴ الاحتمال. وبالإستفصال طلب فصل المسئول عنه من غيره من الأمور المحتملة وتمييزه عنها، وهو الاستفهام عن المسئول عنه منها في تلك الحكاية.
- [3] واحترزوا بالقييد الأخير عما إذا لم يقيم هناك احتمال، وذلك⁵ كقوله عليه السلام لمن قال واقعت في رمضان كُفِّر فلا يعمّ كل إفطار، ومثله قولك لمن يبيع الثرة قبل أن يبدو صلاحها اجتنب هذا أو يبعك هذا فاسد، فإنه يختصه ولا يتعداه إلى أمثاله مما فيه غرر، بخلاف ما إذا سأل⁶ هذا البائع عن بيع الغرر وحكمت بالفساد من دون أن تستفصل⁷ وتسأل عن خصوص المسئول عنه، فإنه حينئذٍ يعمّ ما وقع للسائل وغيره لترك الاستفصال مع قيام الاحتمال.
- [4] ثم إنه لا فرق بين أن يكون السؤال عما وقع من الحال المحكية كما في إن فلاناً⁸ أفطر، أو مع قطع النظر عن الوقوع كأن تقول ما على من أفطر؟، بل الظاهر أنه لا نزاع في هذا الأخير لانتفاء الاحتمال المانع، ولا فرق أيضاً بين أن يكون هناك سؤال حتى يكون ترك استفصال كما مثلنا، أو لم يكن حتى يكون ترك فصل كما في قوله عليه السلام لمن أسلم عن عشر: «أمسك أربعاً وفارق سائرهن»،⁹ من غير أن يفصل بين العقد الدفعي والترتبي، فيختر¹⁰ في الدفعي ويعين الأوائل في الترتبي كما صنع أبو حنيفة.
- [5] وإنما خصّوا الأوّل بالعنوان لأنّ ما وقع لا يكون إلا خاصاً فيكون السؤال عنه، ولا ريب أنّ السؤال إذا كان عن الخاص يكون ترك الاستفهام عنه أدلّ على عموم الحكم، كذا قيل. والوجه إنهم إنّما خصّوه بالذكر

2 M: إن فلاناً

3 M: فسئل

4 M: تقوم

5 M missing وذلك

6 M: سئل

7 KG: يستفصل

8 KG: فلان

9 سنن الترمذي ج 2 ص 298

10 KG: فيجب; M: فينجر

Commentary

[1] The section begins with A'rajī highlighting the issue: If someone posed a question to the Prophet by “relating a scenario” (*ḥikāyat al-ḥāl*), and the Prophet refrained from “seeking clarification” (*al-istiḥṣāl*) about the scenario, then should the Prophet’s reply be understood as a universal statement despite the possibility (*ma‘a qiyām al-iḥtimāl*) that the question pertained to something particular? Al-Shāfi‘ī (d. 204/820), al-Sharīf al-Murtaḍā (d. 436/1044), al-Ghazālī (d. 505/1111), and others were all of the opinion that it should always be considered a universal statement.²

[2] Then A'rajī clarifies the meaning of “relating a scenario” (*ḥikāyat al-ḥāl*) and “seeking clarification” (*al-istiḥṣāl*). The former refers to what the person tells the Prophet about a particular incident. For example, he might say, “So-and-so broke his fast during Ramaḍān,” by which he means to inquire about a particular instance of breaking the fast (i.e. eating, sex, vomiting, etc.) even though he did not specify which one. In this case, although he posed the question in a general way, there is a strong possibility that it pertains to something in particular (e.g. eating). As for “seeking clarification,” it means seeking to differentiate between what the person is actually asking about (e.g. eating) and other possible instances (e.g. sex or vomiting). For example, the Prophet might ask, “How did so-and-so break his fast?”

[3] The addition of the phrase “despite the possibility” (*ma‘a qiyām al-iḥtimāl*) is meant to exclude cases where the question is explicitly about something in particular. For example, if someone says, “I had sex in Ramaḍān,” and the Prophet replies, “Offer expiation,” then we cannot assume that someone who broke the fast by, for example, eating or vomiting should also offer expiation. Because the question was specific, the answer cannot be generalised. Similarly, if someone is selling unripe fruit and you say, “Avoid this,” or “Your sale of this is invalid,” then your statement applies to this case in particular; it does not include other cases involving risk (*gharar*). By contrast, if the seller were to ask about sales involving risk (*bay‘ al-gharar*) and you said they are invalid without inquiring any further, then, even if the seller was asking about a particular item (e.g. dates), your answer would encompass every sale involving risk because (1) you refrained from seeking clarification and (2) there is a possibility that the seller was asking a general question.

[4] Furthermore, it makes no difference whether the question is hypothetical (e.g. What should someone who broke his fast do?) or not (e.g. So-and-so broke his fast). In fact, in the former case, there is no question about its meaning because it can only be understood in a universal sense. Moreover, it makes no difference whether there is a question – in which case refraining from seeking clarification would take the form it took in the examples above – or not. In the latter case, an example of not drawing a distinction is the Prophet’s saying “Keep four [wives] and leave the rest” to a man who had ten wives at the time he became Muslim.³ In this example, the Prophet did not draw a distinction between a scenario in which the man married all ten at once or one after another such that, if he had married all ten at once, he could choose which ones to keep, and if he had married them one after another, then he would have to keep the first four, as Abū Ḥanīfa (d. 150/767) claimed.

[5] A'rajī then explains why the rubric only mentions cases where a question is posed about an incident that occurred. This is because every incident is particular and therefore a question about the incident must also be particular. Obviously, if a question is about something in particular, then to refrain from seeking further clarification is an even stronger indication that the answer is universal – at least this is what is said. Scholars have focused on cases in which a question

لأنّ النزاع إنّما¹¹ هو فيه.

[6] وقد اشتهر التمثيل للاستفصال بقوله صلى الله عليه وآله لما سُئِلَ عن بيع الرطب بالتمر: «أينقص¹² الرطب إذا يبس؟»،¹³ قالوا: «نعم»، فقال: «فلا آذن». وأنت تعلم أنّ هذا ليس من الاستفصال في شيء، إنّما الاستفصال الاستفهام¹⁴ عمّا تعلق به السؤال عند قيام الاحتمال، والمسئول عنه ههنا¹⁵ إنّما هو بيع الرطب وليس محل شبهة، نعم لو وقع بيعه على نحو من مباح ومحذور¹⁶ لصح أن يقال أيّهما أردت؟، ثم إنّ نقصانه باليبس ممّا لا يكاد يخفى على أحد فضلاً عنه صلى الله عليه وآله، وكأنّه صلى الله عليه وآله يريد أن يقول أوليس ينقص باليبس، فكيف يصح؟، فكان تقريراً.

[7] هذا، وفي المسألة مذهبان آخران:

أحدهما للإمام الرازي، وهو إنّما يحكم بالعموم إذا علم بعدم علم المسئول بالحال، فإنّ جَوَزَ علمه به لم يعم لجواز أن يكون أراد بالحكم ما علم دون المطلق، ذكر ذلك في المحصول¹⁷ وردّ به على الشافعي. وهو ظاهر العلامة في التهذيب¹⁸ والغزالي في المنحول¹⁹ وعليه شارح البرهان،²⁰ وربما ادّعي اتفاق الكلمة على أنّه إذا علم اطلاعه على خصوص الواقعة لم يعم الحكم جميع الأحوال، وذلك لأنّه بمنزلة ما إذا سُئِلَ عن شيء بخصوصه، كما في سؤال الأعرابي²¹ عن الوقائع²²، بدليل أنّه لا معنى للاستفصال حينئذٍ.

[8] الثاني ما ذهب إليه بعضهم من أن قيام الاحتمال موجب للإجمال، فلا يدلّ على عموم ولا خصوص، وهو الذي حكاه المصنّف ثانياً. وحاصله أن حكاية الحال إن لم يتطرق إليها احتمال كما في سؤال الأعرابي عن الواقعة صح الاستدلال به، ولكن على خصوص المسئول عنه، وإن قام الاحتمال كما لو قال أفطرت، سقط عن الاستدلال لتحقيق الإجمال باحتمال اختصاص الحكم بأحد الأمرين أو الأمور. ونسب المذهب الثاني إلى الشافعي أيضاً، واضطربت كلمة أصحابه فيه، فمن قائل أنّهما قولان له، وآخر يجمع بينهما بتزليل الأوّل على ما إذا كان الاحتمال مرجوحاً والثاني على التساوي²³، وهذا الأخير لا يقتضي اختصاص الشافعي بالثاني - أعني المنع مطلقاً - فإنّ المثبتين على الإطلاق لا يحكمون بشموله للإحتمال المرجوح، بل ينزلونه على الراجح، إنّما النزاع في التساوي²⁴.

11 M missing إنّما

12 KG: ينقص

13 سنن أبي داود ج 2 ص 115

14 KG missing الاستفهام

15 KG: هنا

16 KG: محذور

17 المحصول ج 2 صص 386-388

18 تهذيب الوصول ص 133

19 المنحول ص 223

20 التحقيق والبيان في شرح البرهان في أصول الفقه ج 2 صص 5-13

21 صحيح البخاري ج 2 صص 235-236

22 M: الوقائع

23 KG: المتساوي

24 KG: المتساوي

is posed about an incident that occurred (as opposed to hypothetical scenarios) because such incidents have been the bone of contention.

[6] It is common to illustrate “seeking clarification” by citing the example of the Prophet who, when he was asked about the sale of fresh dates for dry dates, said, “Does the value of fresh dates decrease once they are dried?” When they said yes, the Prophet said, “Then I do not grant permission.”⁴ This example, however, is unrelated to “seeking clarification” because “seeking clarification” means inquiring further about the issue being asked when there is a possibility of variety of interpretations. In the case of the sale of fresh dates, there is no doubt. If, however, the sale used to take place in a way that was either permissible or non-permissible, then it would be correct to ask which of the two was meant. But the fact that the value of fresh dates decreases once they are dried is something everyone knows let alone the Prophet. It is as though the Prophet wished to say, “Will they not decrease in value if they are dried? So how could it be valid?” This is an example of the Prophet’s tacit consent (*taqrīr*), not “seeking clarification.”

[7] In addition to the opinion attributed to al-Shāfi‘ī (and al-Sharīf al-Murtaḍā and al-Ghazālī) above, there are two other opinions about this issue. First, Fakhr al-Dīn al-Rāzī (d. 606/1209) held that it should be understood as a universal statement if we know that the person being asked was unaware of the specific incident. By contrast, if he might have known, then his answer cannot be generalised. This view, which is expressed in *al-Maḥṣūl*,⁵ contradicts the view of al-Shāfi‘ī, who believed that it should always be understood as a universal statement. It also seems to be the view of al-‘Allāma al-Ḥilli in *Tahdhīb al-wuṣūl*,⁶ al-Ghazālī in *al-Mankhūl*,⁷ and Shāriḥ al-burhān.⁸ Perhaps, we can say that what everyone (ostensibly) agrees upon is the idea that if we know that the Prophet knew about the specific incident, then his answer cannot be generalised. That is because, in this case, it is as though he is being asked about something in particular – such as the Bedouin’s question about sex;⁹ therefore, it does not make any sense to inquire further.

[8] The second opinion is that the possibility that the question pertained to something in particular means the answer is ambiguous and it cannot be understood either as a universal or a particular statement. This is the view that al-Tūnī mentioned second [b.3]. It means that if there is no possibility that the question was general – such as in the case of the Bedouin’s question about sex – then the answer can be adduced as evidence, but only in cases involving the same incident (e.g. sex). If the question might have been general, such as when someone says, “I broke my fast,” then the answer cannot be adduced as evidence because it is ambiguous – the answer might only apply to one way of breaking the fast (e.g. eating). This view has also been attributed to al-Shāfi‘ī, but there is disagreement among the Shāfi‘īs themselves as to how to understand it. Some say that al-Shāfi‘ī held both this view and the view that the answer should be considered a universal statement. Others try to reconcile both statements by arguing that if the possibility that the question was general is stronger, then the answer should be considered universal; however, if the possibility that the question was general is equal to the possibility that it was particular, then the answer cannot be adduced as evidence because it is ambiguous. The latter view is not unique to al-Shāfi‘ī: those who take the view that the answer should always be considered universal do not include cases where there is a strong possibility that the question pertained to something in particular. The bone of contention is cases where the possibility that the question was general is equal to the possibility that it was particular.

[9] وقد يجمع بين هاتين المقتاتين - أعني مقالة الإمام الرازي وما بعدها - بأن الرازي أيضاً²⁵ حاكم بالإجمال عند قيام الاحتمال، وأولئك أيضاً يحكمون بالعموم عند العلم بعدم العلم، إذ الإجمال إنما يجيء من قيام الاحتمال وهو منتف مع العلم بعدم العلم.

[10] وأما ما ليس بحكاية حال ولا كلام على أمر واقع كما تقول ما على من أفطر؟ فالظاهر أنه لا نزاع في حمله على العموم لا تنفء الاحتمال المانع من الحمل أو لتحقيق الموجب، وذلك أنه إن لم يحمل على العموم فإما أن يصرف إلى البعض وهو ترجيح بلا مرجح، أو يلغى الخطاب بلا²⁶ مانع من إعماله، وكلاهما باطل، أو لأن الحكم قد تعلق بالطبيعة فيتبعها حيثما كانت.

[11] وبالجملّة، فالكلام في حكايات الأحوال والأمور الواقعة وإن تعرض لها ابتداء من دون حكاية، وبالجملّة ما يمكن تعلق الحكم بخصوصه. ونحن نقول: إن الذي استمرت عليه طرائق²⁷ الناس في المحاورات هو أنه²⁸ إذا سُئل أحدهم عن حكم شيء بقدر مشترك أو عن²⁹ حكم القدر المشترك، فإن كانت الأفراد مختلفة في الحكم عاد المسؤل بالسؤال وقال: عن أيهما تسأل؟

[12] جرت بذلك عاداتهم حتى النساء والصبيان، وهذا كما وقع لأبي جعفر - عليه السلام - في حادثة سنّه مع القاضي يحيى بن أكثم حين سأله العباسيون أن يعدّ له مسألة يقطع فيها ليصرفوا عنه وجه المأمون، فقال له بمشهد من المأمون وكان يوماً مشهوداً: «ما تقول في محرم قتل صيداً؟»، فقال أبو جعفر عليه السلام: «في حل أم حرم؟ عالماً أم جاهلاً؟ عمداً أم خطأ؟ صغيراً أو كبيراً؟ عبداً القاتل أم حراً؟ مبتدئاً أو معيداً؟ من ذوات الطير أو من غيرها؟ من صغار الصيد أو من كبارها؟ مصرّاً أو نادماً؟ بالليل في وكرها أم بالنهار عياناً؟ محرماً للعمرة أو مفرداً بالحج؟» فانقطع يحيى ولم يرد³⁰ جواباً.³¹

[13] وهذا وإن لم يكن حكاية حال لكن³² الغرض بيان العادة في السؤال. وربما فصل مبتدئاً³³ من دون أن يُسأل، وإن كانت الأفراد متفقة في الحكم ترك المسؤل الاستفهام عن خصوص المسؤل عنه لعدم الفائدة، وكان تركه للاستفهام بحكم تلك العادة - خصوصاً إذا كان حكيماً - دليلاً على عموم الحكم، وكذا الشأن إذا أمر بمثل ذلك أو أخبر.³⁴ ولما كانت محاورات الشرع³⁵ على نمط محاورات الناس كان تركه للسؤال دليلاً على العموم.

25 M missing أيضاً

26 M: ولا

27 M: طريقة

28 M missing هو أنه

29 M missing عن

30 KG: يجر

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32 KG: يكن

33 KG: مبتدأ؛ M: مبتدأ

34 M: أجزه

35 KG: المشرع

[9] We may be able to reconcile al-Rāzī's opinion with the second opinion attributed to al-Shāfi'ī by saying that, in cases where there is a possibility that the question pertained to something in particular, al-Rāzī would agree that the answer is ambiguous; in cases where we know that the Prophet had no knowledge of the specific incident, then the proponents of the second opinion attributed to al-Shāfi'ī would agree that the answer should be considered a universal statement. It is the possibility that the question pertained to something in particular that gives rise to the ambiguity of the answer, but there is no such possibility in cases where we know the Prophet had no knowledge of the specific incident.

[10] As for cases in which no scenario is related, or hypothetical cases, such as when one says, "What should one who broke his fast do?" there does not appear to be any disagreement: the answer should be understood as a universal statement either because there is nothing to prevent us from considering it universal or because the question is phrased in a way that necessitates understanding the answer as universal. If it were not considered universal, then we would have to say that the answer pertains to some instances and not others – which entails giving preference to one of two possibilities without a reason (*tarjih bi-lā murajjih*) – or we would have to say that the speech (*khiṭāb*) is nullified for no reason – both of which are invalid – or we might say that the answer centres around the generality of any case and therefore follows it in its explanation.

[11] So, in sum, the debate only concerns cases where a scenario is related (*ḥikāyāt al-aḥwāl*) and an incident has actually occurred (*al-umūr al-wāqi'ah*) even if the Prophet addresses it without having been told the scenario. In these cases, the question is: to which particular things can the answer pertain? In general, the way people talk is that when someone is asked about an issue like breaking one's fast, and there are several ways to break one's fast (i.e. eating, sex, etc.), then, if the legal consequences of breaking one's fast differ based on how it is broken, the person being questioned will ask the petitioner which one he is inquiring about.

[12] This is how people converse customarily and this is precisely what happened to Imam Muḥammad al-Jawād (d. 220/835) in his youth when the 'Abbāsids asked the judge Ibn Aktham (d. 242/857) to contrive questions the Imam would not be able to answer so that he would fall out of favour with the caliph al-Ma'mūn (r. 198–218/813–833). In the presence of al-Ma'mūn, Ibn Aktham asked the Imam, "What do you say about a person in the state of *iḥrām* who kills an animal?" The Imam replied, "Was that within the sacred precinct (*ḥaram*) or outside it (*ḥill*)? Did he know what he was doing is wrong or not? Did he do it intentionally or accidentally? Was he an adult or a child? Was he a slave or a freeman? Was this his first offence or not? Did he kill an animal that flies or something else? Was the animal small or large? Was he repentant or not? Did he kill it at night when the animal was in its home or during the day? Had he entered into the state of *iḥrām* for the hajj or the 'umrah?" Ibn Aktham was speechless.¹⁰

[13] Although it is not an example of "relating a scenario," it is mentioned to illustrate how people normally pose questions. The one asking might even offer details without being asked. But if the rule is the same in every instance, then the one being asked does not inquire into details because there is no reason to do so. Based on this custom, when someone (particularly a wise person) is asked a question, and he answers it without inquiring any further, this constitutes evidence of the universality of his answer, whether it is in the form of an imperative or declarative statement. When the Sharia converses in a way that is analogous to the way ordinary people converse, then its answers should be considered universal, particularly those that are issued without making any further inquiry.

[14] على أنَّ المناسب لحال الشارع الذي غرضه إقامة الدين وبيان الشريعة المستقيمة التي يشترك فيها الأولون، والآخرون، والحاضرون، والغائبون، والموجودون، والمعدومون بحيث ينشأ عليها الصغير، ويربو فيها الكبير، وتمتدَّى³⁶ عليها الأعصار، وتنفى فيها الأعمار وكان بيانه للأحكام إنَّما هو عند عروضها للمكلفين وسؤالهم عنها ضبط القواعد الكلية دون الكلام على الصور الجزئية، فإذا قال أمسك أربعاً، فالظاهر أنَّ ذلك حكم كلِّ من كان تحته أكثر من أربع على أي نحو كان دون خصوص المخاطب ونحوه ممَّن كان عقده على الجميع دفعياً، مضافاً إلى ما في ذلك من التغرير بالجهل للمعدومين والغائبين بل للحاضرين بل للمخاطب نفسه في واقعة أخرى.

[15] وتجوز العلم لا ندفعه، وإنَّما تمنع إصدار الجواب على حسب ما يعلم مريداً به خلاف ظاهره. ووقوع ذلك في بعض الأحيان من المفتين وغالباً من المعلمين والأطباء وأرباب الحرف والصناعات إنَّما صح لأنَّ الغرض إنَّما هو العمل لا إظهار الأحكام³⁷ وضبطها وعدم اختلاطها، بل كثيراً ما يتقصّد الأطباء ومن يليهم الإخفاء وعدم البيان بشيء³⁸.

[16] فإن قلت: لا معنى للاستفصال حينئذٍ لمكان العلم. قلنا: ما كُنَّا لنوجب الاستفصال على العالم، وإنَّما نوجب عليه التفصيل لإزاحة العلة. فإن قلت: أقصى ما هناك أنَّه تأخير بيان عن وقت الخطاب، ونحن لا نمنعه. قلت: إن أجزنا تأخيره عن وقت الخطاب فما كُنَّا لنحيز تأخيره عن وقت الحاجة، ولا ريب في عروضها في هذه المدد المتطاولة، بل في عصره عليه السلام، بل حال الخطاب حسب ما تقتضي³⁹ به العادة.⁴⁰

[17] فأما من نفى العموم على الإطلاق فقد كابر الوجدان وخرج بكلام⁴¹ أرباب الشريعة عمَّا استقرَّت عليه طريقة أهل اللغات. أولست إذا سألت وقلت قد تعذر عليَّ استعمال الماء فهل لي أن أبادر⁴² إلى التيمم بالصلاة⁴³ أم لا؟، فأذن لك بالمبادرة على الإطلاق تُبادر من غير⁴⁴ أن تفرق بين مرجو الزوال وغيره، وكذا المستحاضة إذا سألت فأطلق لها الجواب سُوي بين المراتب الثلاثة. وبالجمله فالمدار على الظاهر المتبادر، واحتمال اقتضاء المقام الإجمال والإيهام لا يعارضه، اللهمَّ إلَّا أن يشتهر العام بشيء كالإفطار بالأكل فرضاً فينزل الجواب عليه.

36 M: تمتدَّى

37 M: الكلام

38 KG: شيئاً

39 KG: تقضي

40 KG: العادات

41 KG: كلام

42 KG: يبادر

43 M: والصلاة

44 KG mistakenly contains غير

[14] Because the purpose of legislation is to establish religion and elucidate the law, which encompasses everyone, and because the Lawgiver only elucidates rules when relevant situations arise and people ask questions about them, the Lawgiver lays down universal rules; he does not speak in particularities. So if he says, “Keep four wives,” then *prima facie*, this rule applies to anyone who has more than four wives, irrespective of how he married them; it is not specific to the one being addressed. Speaking otherwise would doom those who are not present, future generations, and even those who are present to ignorance. In fact, even the one being addressed would be doomed to ignorance when facing another similar incident.

[15] A'rajī does not deny the possibility that the Prophet knew the specific incident; rather, what he denies is the possibility that the Prophet would give an answer based on his knowledge of the specific incident, but intend something other than the apparent meaning of what he said. Yes, sometimes *mufṭis*, teachers, doctors, etc. speak based on their knowledge of the details of a given question, but that is only because they are concerned with action, not the promulgation of laws.

[16] In response to the claim that it does not make sense for someone who knows the specific incident to seek clarification, A'rajī notes that he does not believe reason dictates that someone who knows the specific incident must seek clarification; rather, he believes reason dictates that his answer should differentiate between similar cases in order to disclose the underlying reason (i.e. the *ratio legis*). In that case, however, one could argue, all it means is that the respondent has postponed explaining the underlying reason, which is perfectly acceptable. In response to this objection, A'rajī states that even if we were to concede this point, we would not consider such a delay possible if there is a need, either at the time or within the lifetime of the respondent (i.e. the Prophet).

[17] As for those who believe the Prophet's reply can never be understood as a universal statement, they are stubbornly renouncing their own conscience (*al-wijdān*) and going beyond the conventions established by linguists (which they themselves follow) by reading into the statements of the lawgivers/jurists. For example, if you say, “I am unable to use water. Can I do *tayammum* right away and perform the ritual prayer?” and you are given permission to do *tayammum* right away (without any qualifications), then you will do just that without differentiating between instances where you have a reasonable expectation of being able to use water soon and other instances. Similarly, if a woman who asked about menstruation were given a general answer, she would not differentiate between the three stages of menstruation. So, in sum, the central factor is the *prima facie* meaning that occurs to one's mind immediately (*al-ẓāhir al-muṭabādir*). The risk that the answer will become vague and ambiguous (with respect to the particular instance that is being addressed) does not contradict the established general rule, except in cases where the general category (e.g. breaking the fast) is associated with a specific example (e.g. eating). In this case, the answer would only apply to eating.

[18] ولمانع⁴⁵ بعد هذا كله ان يمنع من استمرار طرائق الناس على الاستفصال أو التفصيل على الإطلاق ليكون ظاهراً في العموم مع⁴⁶ الجهل بالحال، وأما مع العلم فقد يفصلون وقد يتركون ذاهبين بالحكم إلى الخصوص المعلوم كما⁴⁷ عرفت عن أهل الحرف وغيرهم. فأما⁴⁸ ما جرت به العادات من السؤال فإنما هو عند الجهل بالحال أو حيث لا يكون السؤال عمّا وقع كأن يقول ما على من أفطر؟ أو عمّا وقع ولكن لا باعتبار وقوعها كأن يقول رجل أفطر، ولا كلام في شيء من ذلك، إنما الكلام فيما يكون السؤال فيه عن أمر وقع وهو المراد بحكاية الحال، وهذا إن لم نقل بظهور اختصاص الحكم فيه بالمعلوم لم نقل بظهور⁴⁹ خلافه - أعني العموم⁵⁰ - اللهم إلا أن يكون الجواب في نفسه عاماً، كأن يقول من أفطر، كُفّر، فيعم حينئذٍ، ولا كلام في⁵¹ هذا أيضاً⁵²، إنما الكلام في غيره كأن يقول له كُفّر.

[19] قولك: المناسب ضبط القوانين.

قلنا: مسلم، وهو الغالب المستفيض، ولكن نقول: إذا اتفق أن يُسأل⁵³ يوماً عن واقعة يعلمها، فقال في الجواب إفعل كذا، فليس ذلك بالقانون، إنما القانون أن يقول له من فعل كذا وجب عليه كذا أو فعل كذا يوجب كذا.⁵⁴

قولك: إن في ترك التفصيل تأخير البيان عن وقت الحاجة.

قلنا: إنما يتم لو كان قوله إفعل كذا، مع العلم بالحال ظاهراً في القانون وليس كذلك. إنما الظاهر قوله من فعل كذا أو فعل كذا، ونحن نمنع أن يقول ذلك في محل التفصيل، ثم لا يفصل.

[20] إن قلت: ما أنكرت، فالظهور لا يكاد يُنكر، فإن كل من سمع عليلاً أو سليماً⁵⁵ أو صانعاً عرض له في صنعته ما اعياه أو مستفتياً أو غير هؤلاء⁵⁶ ممن عرض له ما لا يعرف يسأل عارفاً فأمره فيما سأله بأمر، علم أن هذا الأمر لما سئل عنه، إن خاصاً بخاص وإن عاماً فعام، فإذا قال له أكلت، فأمره بالكفارة، علمنا أن ماهية الأكل سبب للكفارة في نظره⁵⁷، وإن لم تقصره على نوع من الأكل ولا تختطه إلى غيره من الضرب والنوم ونحو ذلك، وإذا قال له أفطرت، فقال له: كُفّر،⁵⁸ قد⁵⁹ علمنا أن ماهية الإفطار في نظره⁶⁰ سبب للكفارة، ولم تقصر السببية على نوع من الإفطار دون آخر ولا تختطه⁶¹ إلى غيره من الظلم ونحوه، وبالجملة فالمتبادر المنساق من الاقتران تعلق المقارن بماهية ما قارنه لا بصنف أو نوع منها ولا نريد بالعموم إلا هذا.

45 M: مانع

46 M: بل مع

47 M: عليه كما

48 M: وأما

49 M missing اختصاص الحكم فيه بالمعلوم لم نقل بظهور

50 M: عن المعلوم

51 KG missing في

52 M missing أيضاً

53 M: سئل

54 M missing أو فعل كذا يوجب كذا

55 M: سمياً

56 KG: سؤال

57 KG: نظره

58 KG missing له كُفّر

59 M missing عن

60 KG: نظره instead of الاكل M: نظره

61 KG: تختطه

[18] One who believes that the Prophet's reply can never be understood as a universal statement is essentially asking us to ignore the common practice of seeking clarification or differentiating between similar cases – this is common practice in cases where the respondent does not know the specific incident. In cases where the respondent knows the specific incident, he may or may not provide additional details, believing himself to be providing a specific answer based on his knowledge of the case. This is how, for example, mechanics normally answer questions. As for the general practice of seeking clarification, that is when one does not know the specific incident, the question is hypothetical (e.g. What should one who broke his fast do?), or the question is about something that occurred, but not with regard to its occurrence (e.g. A man broke his fast). None of these examples are relevant; the discussion is about instances where the question is about something that actually happened *and* it is posed as such – that is what is meant by “relating a scenario” (*ḥikāyat al-ḥāl*). In this regard, A'rajī's view is that we cannot say that *prima facie* the answer only applies to what happened nor can we say it is universal unless the answer is itself universal (e.g. One who broke his fast must offer expiation). Such exceptions are, however, irrelevant; in the previous example, to be relevant, the answer would have to be “Offer expiation.”

[19] In response to the claim that the nature of legislation is to establish universal laws (*ḍabṭ al-qawānīn*), A'rajī says that is true most of the time; however, if, one day, the Prophet were asked about an incident that he knew about, and he replied, “Do so-and-so,” that is not a law (*fa-laysa dhālika bi-l-qānūn*). It would only be a law if he replied, “Whoever does so-and-so must do so-and-so” or “Doing so-and-so necessitates so-and-so.” In response to the notion that, by refraining from differentiating between similar cases, the Prophet is delaying the provision of an explanation beyond the time when it is needed – because this is unacceptable, the Prophet cannot have refrained from differentiating between similar cases and his answer should therefore be understood as a universal statement – A'rajī says this would only be correct if we assume that when the Prophet says “Do so-and-so” while knowing the specific incident, it is law. That, however, is not the case. It only becomes law when the Prophet says “Whoever does so-and-so” or “Doing so-and-so.” According to A'rajī, the Prophet cannot say this without differentiating between similar cases if there are any.

[20] Then A'rajī poses a lengthy rhetorical objection: someone might say: No one can deny the *prima facie* meaning. Anyone who hears someone pose a question to a knowledgeable person, and hears him reply with instructions, understands that these instructions pertain to whatever the question was about – if it was about something in particular, then the answer is specific to that thing, and if it was about something general, then the answer is also general. For example, if someone says, “I ate” and the respondent tells him to offer expiation, we know that the quiddity (*māhiya*) “eating” is grounds for expiation (*sabab lil-kaffāra*) in his view, although we do not restrict what he said to a particular type of food nor do we extend it to other grounds for expiation (e.g. hitting, sleeping, etc.). Similarly, if someone says, “I broke my fast” and the respondent tells him to offer expiation, we know that the quiddity “breaking the fast” is grounds for expiation in his view, although we do not restrict these grounds to a particular way of breaking the fast (e.g. eating) nor do we extend it to other cases like oppression. In sum, based on the association of an answer with a question, what occurs to the mind immediately is the relationship between the answer and the *quiddity* in the question, not a particular type of that quiddity. When we say the answer should be understood as a universal statement, we mean it applies to the quiddity in question.

[21] قلت⁶²: ظهور ذلك من الاقتران الصوري لا ننكره، ولكن قل لي هل عقنا ذلك إلا من حيث أنه لم يستفصل، فلو لم تكن الماهية من حيث هي سبباً بل كان السبب نوعاً⁶³ منها لاستفصل. ونحن ننكر هذا مع العلم، ونقول من الجائز أن يكون السبب هو النوع، وإنما لم يستفصل لعله به.

لكن الإنصاف بعد هذا كله أن الظاهر إنما هو سببية الماهية دون نوع منها وإن كان عالماً ما هو مقرر عند الكل من أنه -صلى الله عليه وآله- إنما كان يعامل الناس بالظاهر، فطلب⁶⁴ من المدعي البيّنة، ومن المنكر اليقين، ومن المفتري الشهود، وإن اعضلت القضايا، وإلا لارتفع الابتلاء، فكان أمره، ونهيه، وخطاباته، ومحاوراته كمحاورات الناس بعضهم لبعض. وأنت إذا سمعت أحداً⁶⁵ يقول للمفتي أفطرت، فيقول له كفر، لم تشك في أن مطلق الإفطار سبب عنده وإلا لسأله⁶⁶. ثم لا تلتفت إلى احتمال أن يكون عالماً بالخصوصية، ولا أقل من الظهور، نعم إذا وجده⁶⁷ يأكل مثلاً فقال له كفر، قصر على الخصوصية.

[22] فإن قلت: أوليس من الجائز أن يكون رآه يأكل أو علم به بطريق عادي من طرق العلم وجاء إليه ليسأله⁶⁸ ويقول له أفطرت وهو لا يعلم أنه⁶⁹ قد علم به، فأمره بما يقتضيه ما علم منه من الخصوصية دون مطلق الماهية.

[23] قلت: مثل⁷⁰ هذا⁷¹ الاحتمال البعيد لا يقدح في الظهور، وبالجملة فالظاهر من الجواب تعلقه بالسؤال، وكذا كل ما لم يشاهد وإن لم يُسأل عنه كقصة ابن غيلان،⁷² كما أن الظاهر من الأمر الواردة عند مشاهدة الفعل إنما هو تعلقه بخصوص المشاهد دون القدر المشترك بينه وبين غيره. هذا كله مضافاً إلى ما يلزم من التغرير بالجهل للعدوم والغائب بل الحاضر والسائل. فكان التحقيق ما عليه الأكثر من أن ترك الاستفصال قاضٍ بالعموم.

[24] ولئن تنزلنا وقلنا بتأثير العلم بالتحقيق أن نقول: ما جاء في الجواب⁷³ من نحو افعل كذا، إن ظهر من حاله عدم العلم بحال السائل كأن يحكي له قصة جرت عليه وهو يستكشف مواضع الخفاء منها وجب حمله على العموم، وإن لم يظهر ذلك بل ظهر علمه بحاله أو⁷⁴ أجزنا عليه أن يعلم احتمال كلا الأمرين وكان مجملًا، ولا يلزم من ذلك إلغاء كثير من الخطابات كما قد يظن، بل أقصاه أنه حينئذ لا ينهض حجة للنصم في محل النزاع. وأما نحو من فعل كذا وجب عليه كذا أو فعل كذا يوجب كذا، فلا ينبغي أن يرتاب في عمومه، سواء وقع جواباً للسؤال عما وقع أو عن غيره مع العلم بالحال أو مع الجهل.

62 KG includes قلت twice.

63 KG: وقوع

64 M: يطلب

65 M missing أحداً

66 M: يسأله

67 KG: وجدته

68 KG: لسأله

69 KG: ان

70 M: مطلق

71 KG: هذه

72 KG: 268 ص 1 سنن ابن ماجه ج

73 KG: جواب

74 M: و

[21] A'rajī accepts this, but argues that we only know it because the respondent refrained from seeking clarification. If a particular type of quiddity and not the quiddity itself were the reason (*sabab*), then he would have sought clarification. If, however, the respondent knows the specific incident and therefore does not seek clarification, then the grounds for the rule could be a particular type of the quiddity. Nevertheless, *prima facie*, the quiddity is the grounds, not a particular type of quiddity. This is the case despite the fact that everyone agrees the Prophet interacted with people based on what was apparent. For example, he asked plaintiffs for evidence, he asked defendants to take an oath, and he asked accusers (*muftarī*) to produce witnesses – he spoke to people the way people speak to each other. If you heard someone tell a *muftī* “I broke my fast” and the *muftī* say “Offer expiation,” you would think he believes that breaking one’s fast, no matter how, is grounds for expiation. If the *muftī* did not believe that, he would have asked the man how he broke his fast. You would not consider the possibility that the *muftī* knew the specific incident. At the very least, this is what is apparent. Yes, if the *muftī* had seen the man eating, then you would restrict his answer to that one way of breaking the fast.

[22] Then A'rajī considers the following scenario: Suppose the *muftī* saw the man eat or discovered (through ordinary means) that he had broken his fast by eating. Suppose further that the man came to the *muftī* and said “I broke my fast” without realising that the *muftī* already knew, and the *muftī* told him to offer expiation. The man would think that anyone who breaks their fast (irrespective of how) must offer expiation, not just someone who breaks their fast by eating.

[23] In response, A'rajī says that such an unlikely scenario does not lessen the reasonability of acting upon what is apparent. We can still say that, *prima facie*, the answer pertains to the question. That is true for any incident that was not witnessed, even if there was no actual question (like in the story of Ibn Ghaylān).¹¹ Similarly, when the incident is witnessed, *prima facie*, all we can say is that the answer pertains to exactly what was seen, nothing more. Moreover, if that were not the case, then future generations and those who are not present, even those who are present and the petitioner himself would be doomed to ignorance. So the majority opinion is the most accurate one: refraining from seeking clarification does in fact entail a universal statement.

[24] For the sake of argument, A'rajī argues, if we were to concede that the question of whether the respondent knows the specific incident is crucial, then the most accurate opinion would be that, when his answer is in the form “Do so-and-so,” if it appears that he does not know the specific incident – such as if the petitioner relates a story and the respondent asks questions about unclear details – then his answer must be understood as a universal statement. If, however, he does appear to know the specific incident (or we grant that he knows), then his answer is ambiguous: it could be universal or particular. Contrary to what some might think, this does not entail the nullification of most legal addresses (*khiṭābāt*); rather, at most, it means such answers cannot be cited as evidence in this discussion. As for instances where his answer is in the form “Whoever does so-and-so, must do so-and-so” or “Doing so-and-so necessitates so-and-so,” there is no doubt that such answers should be understood as universal statements, irrespective of whether they are answers to a question about something that happened and whether the respondent knows about it or not.

[25] قوله: [1.a] واختار الأول العلامة

لا يظهر منه اختياره على الإطلاق ولا في شيء من كتبه. أمّا التهذيب فبعد أن ذكر العنوان ومثّل بحكاية ابن غيلان، قال: «وفيه نظر لاحتمال علمه عليه السلام بالحال»،⁷⁵ وهو ظاهر في مقالة الرازي، وأمّا النهاية فقال فيها ما نصّه: «يحمل على العموم ما علم أو ظن أنّه لم يعلم ولا يمتنع إلّا إذا علم أنّه عالم».⁷⁶

[26] وتلك مقالة أخرى رابعة مفصلة يرجع حاصلها إلى الحكم في مقامين والسكوت في ثالث.⁷⁷ وذلك لأنّه شرط حمله على العموم بالعلم بعدم علمه أو ظنه وامتناع حمله بالعلم بعلمه وبقي ما كان علمه فيه مظنوناً أو مشكوكاً فيه مسكوتاً عنه، وأمّا ما لا⁷⁸ مجال لاحتمال الخصوص فيه وهو ما لم يقع فلا كلام فيه، لأنّ⁷⁹ الكلام إنّما هو في حكايات الأحوال.

[27] وهذه المقالة تخالف مقالة الرازي من حيث أنّه شرط امتناع الحمل على العموم بعلمه،⁸⁰ واكتفى الرازي فيه بتجوز علمه، ولأنّ القسمة على مقالة الرازي ثنائية وعلى هذا ثلاثية، ومخالفتها لمقالة الأولين ظاهرة لأنّهم يحملون في الكل وهو يحمل في مقام ويمنع في مقام ويسكت في آخر، ولأنّهم لا يرون العلم بالعلم مانعاً من الحمل على العموم وقد رآه. وكيف كان فهي أقرب إلى الأول مما في التهذيب لموافقة ما فيه للثالثة في العمل لثبوت الجواز فيمتنع الحمل على العموم.

[28] فإن قلت: إذا لم يكن المسئول عنه واقعاً امتنع العلم فيصحّ الحمل على العموم حينئذٍ عنده مع امتناعه عند أولئك فلم يتفق العمل. قلت: إطلاق هؤلاء لمنع الحمل إنّما هو في حكايات الأحوال لا مطلقاً، بل الظاهر أنّهم يذهبون إلى الحمل مع عدم الحكاية لانتفاء الاحتمال الموجب للإجمال، وكذا الكلام فيما إذا علم بعدم العلم، فإنّ الظاهر أنّهم يحملونه على العموم لعدم الاحتمال المانع مع أنّه فرضي.

75 تهذيب الوصول ص 133
76 نهاية الوصول ج 2 ص 248
77 مقام ثالث M:

لا KG missing 78
اذ M: 79
بالعلم بعلمه M: 80

[25] The next sentence that A'rajī comments on is “al-ʿAllāma chose the first opinion [a.1].”¹² According to A'rajī, it is not evident that al-ʿAllāma chose the first opinion unequivocally (*ʿalā l-iṭlāq*). In fact, this does not appear in any of his writings. For example, in *al-Tahdhīb*, after mentioning the issue and citing the story of Ibn Ghaylān as an example, he says, “It is debatable (*wa-fihi naẓar*) due to the fact that the Prophet (peace be upon him) may have known the specific incident,”¹³ which is also the view of al-Rāzī. In *al-Nihāya*, he states, “It should be considered universal as long as it is known or there is no reasonable doubt that the Prophet did not know the specific incident. It is only impossible to consider it universal if it is known that the Prophet knew the specific incident.”¹⁴

[26] The view expressed in *al-Nihāya* is a fourth position on the question. The first three opinions are: (1) it should always be considered a universal statement; (2) whether it should be considered a universal statement depends on if the respondent knew the specific incident: (2a) if he did not know, then it should be considered universal; (2b) if he may have known, then it cannot be considered universal; and (3) the possibility that the question pertained to something in particular means the answer is ambiguous and it cannot be understood either as a universal or a particular statement. The view expressed in *al-Nihāya* (4) can be summarised as follows: in a scenario like (2a), it should be considered universal; in a scenario like (2b), it cannot be considered universal; and in a scenario like (3), it cannot be considered universal or particular. Thus al-ʿAllāma made knowing that the respondent did not know (or even suppose) a condition for considering his answer universal, and made knowing that he knew a condition for excluding the possibility that his answer was universal; in a scenario where we cannot reasonably suppose that he knew, the answer lapses (*maskūtan ʿanhu*). Al-ʿAllāma says nothing about cases where there is no possibility of the answer being understood as particular (viz. hypothetical questions) because the discussion only pertains to cases where an actual scenario is related.

[27] In fact, (4) is different from (2) because in (4) what makes it impossible for us to consider the answer universal is the respondent's knowledge of the specific incident, whereas in (2) the mere possibility that the respondent knew the specific incident makes it impossible for us to consider his answer universal. Furthermore, (2) implies a two-fold typology, whereas (4) implies a three-fold typology. Additionally, in contrast to (2), (4) clearly conflicts with (1) since, according to (1), the answer should always be considered a universal statement, whereas, according to (4), it should be considered universal in one scenario, it should not be considered universal in another scenario, and it lapses in a third scenario. Finally, those who hold (1) do not believe that knowing that the respondent knew the specific incident prevents us from considering his answer universal. In any case, the view is expressed in *al-Nihāya* (4) is closer to (1) than the view expressed in *al-Tahdhīb* due to the fact that the latter accords with (3) with respect to action because the existence of the possibility that the question pertained to something in particular prevents us from considering it universal.

[28] Then A'rajī raises the following rhetorical objection: If the question is hypothetical, then it is impossible for the respondent to know the specific incident. In this case, based on what he said in *al-Tahdhīb*, al-ʿAllāma would say the answer should be considered universal whereas they (i.e. the proponents of the (3)) would say it cannot be considered universal, so they do not agree vis-à-vis action. In response, A'rajī says they only say it cannot be considered universal in cases where a scenario is related, not unequivocally. In fact, they even seem to believe that it can be considered universal in cases where no scenario is related because, in such cases, there is no possibility that the question pertains to something in particular and this possibility is what gives

[29] ثم ما في التهذيب أولى مما في النهاية لأن العلم بالعلم إن منع فليس إلا لتجويزنا عليه -صلى الله عليه وآله- أن يعاملهم بحسب العلم، وذلك متحقق مع جواز العلم، وإن انتفى الظن والعلم⁸¹ فلا أثر للعلم بالعلم، بل إن تم كفى الجواز.

[30] قوله: [b] والحق...إلخ

حاصل هذا التحقيق أن المسؤول عنه إن كان واقعاً وسُئل عنه باعتبار الوقوع، فإن قطعنا أو ظننا أن المسؤول عالم بوقوعه امتنع حمله على العموم ووجب صرفه إلى ذلك الخاص المعلوم، وإن احتملنا علمه بذلك كان مجملًا لا ينزل على خصوص ولا عموم كما هو طريقة القول الثاني، وإن لم يكن واقعاً أو كان ولكن لم يُسئل عنه باعتبار الوقوع بل عن الماهية من حيث هي حمل على العموم إلا أن يغلب في فرد فيصرف إليه.

[31] وهي كما ترى مقالة خامسة مبتنية على القول بتأثير العلم بالعلم في المنع من الحمل على العموم، بل جواز العلم كما هو مذهب الرازي، لكنها تخالف مقالته من حيث أن المصنّف أوجب مع رجحان العلم الحمل على المعلوم وحكم بالإجمال⁸² مع الاحتمال، والرازي يحكم بالإجمال في كل ما لم يعلم فيه عدم العلم ويوجب الحمل على العموم مع العلم بعدم العلم والمصنّف لم يتعرض له، وأمّا تعرض المصنّف لغير الواقع ونحوه فقد عرفت أنه خارج عن محل النزاع، فلا يكون وجه افتراق.

[32] قلت: وهنا قسم آخر رابع، وهو أن يُسئل عن واقعة باعتبار الوقوع مع العلم أو الظن بعدم العلم، وقد عرفت أن الوجه في مثله الحمل على العموم، وأمّا السؤال لا باعتباره مع ترجيح العلم أو عدمه أو الشك بالعلم، فهو الذي أراد بالثالث.⁸³

81 M: العلم والظن

82 KG: بالإجماع

83 KG mistakenly contains extra با before الثالث

rise to ambiguity in the first place. Similarly, in cases where it is known that the respondent does not know the specific incident, they also appear to believe that his answer should be considered universal because, in such cases, there is no reason not to consider it universal.

[29] So, according to A'rajī, the opinion al-ʿAllāma expressed in *al-Tahdhīb* is better than the opinion he expressed in *al-Nihāya*. That is because, if we disallow knowing that the Prophet knew the specific incident, that is only because we suppose that he interacted with people on the basis of knowledge, which is the case if we suppose he knew the specific incident. If, however, we do not know and cannot suppose (beyond a reasonable doubt), then knowing that the Prophet knew the specific incident has no bearing (and if we do not suppose that the Prophet knows the specific incident, then it makes no sense to talk about our knowledge of the Prophet's knowledge). Rather, even if we do not know, the possibility that the Prophet knew the specific incident is sufficient.

[30] Finally, A'rajī considers al-Tūnī's view.¹⁵ A'rajī says, if the question pertains to something that actually happened *and* it is posed as such (i.e. with regard to its occurrence), then, if we know or reasonably suppose that the respondent knows about the incident in question, we cannot consider his answer universal – it must be understood as pertaining specifically to what happened. If, however, we only think the respondent could have known, then his answer is ambiguous – it cannot be considered particular or universal (which is the second opinion mentioned above). If the question pertains to something that actually happened but it is *not* posed as such (i.e. it is about the quiddity itself) or if the question is hypothetical, then the answer should be considered universal unless one example of the quiddity (e.g. breaking one's fast by eating as opposed to having sex) is very common, in which case the answer should be understood as pertaining specifically to that example.

[31] This is a fifth opinion and it is based on the notion that knowing that the respondent knew about the incident in question prevents us from considering his answer universal. Even the possibility that we know that the respondent knew the incident in question prevents us from considering his answer universal, as al-Rāzī said. However, (5) conflicts with al-Rāzī's view because, according to al-Tūnī, the answer *must* be considered universal if it is more likely that we know that the respondent knew about the incident in question. If it is only possible that we know that the respondent knew, then, according to al-Tūnī, his answer is ambiguous. By contrast, al-Rāzī held that the respondent's answer is ambiguous as long as we do not know that the respondent did not know about the incident in question, and that the respondent's answer must be considered universal if we know that he did not know about the incident in question. Al-Tūnī did not consider this case. As for al-Tūnī's discussion of hypothetical cases and the like, it is beyond the scope of the issue so it does not reflect a relevant disagreement.

[32] According to A'rajī, there is a fourth scenario: suppose the question is about something that actually happened and it is posed as such and we know (or reasonably suppose) that the respondent does not know about the incident in question. In such cases, the respondent's answer should be considered universal. What if, however, the question is not posed as such (i.e. with regard to the occurrence of the incident), and either it is more likely that we know the respondent knew what happened, it is more likely that we do not know that he knew what happened, or we doubt that he knew what happened? This is what al-Tūnī means by the third scenario [b.5].

[33] وإطلاق كلامه كغيره شامل لأقسام الأجوبة كلها، وحينئذٍ فيتوجه في الأولين أنه إذا قال في الجواب: من فعل كذا وجب عليه كذا، أو فعل كذا يوجب كذا، فلا ريب في عمومه، ولا يختلف حاله باختلاف حال السائل والمسئول،⁸⁴ إنما ذلك حيث يقول في الجواب إفعال كذا كما عرفت في التحقيق، وفي الثالث أنه إذا قال في الجواب: إفعال كذا، لعلمه بأنه هو صاحب الواقعة، وإنما أعرض عن بيان ذلك في السؤال حياة، فلا ريب في عدم عمومته⁸⁵ حينئذٍ، وكثيراً ما يتفق هذا في الناس، فيقول المسئول أمّا أنت فافعل كذا وما عليك من غيرك. إنما يعم إذا جاء به عامّاً كأن يقول⁸⁶: من فعل كذا فعليه كذا، أو فعل كذا يوجب كذا، لتعلقه بالطبيعة، أو قال في جواب رجل فعل كذا عليه كذا، وهذا⁸⁷ الذي سبق عليه الدليل، وأمّا الأولان فلا يحتاج الحكم بعمومهما إلى هذا الاستدلال.

[34] قوله في بيان القسم الأول: [2.b] لأنّ الجواب ينصرف...إلخ

إنما ينصرف الجواب إلى ما وقع في السؤال من مقيد أو مطلق، وقصارى بتأثير العلم أن يكون انصرافه إليهما - أعني المطلق الواقع في السؤال والخصوصية المعلومة البارزة إلى الخارج - على حدّ سواء، أمّا اختصاصه بالخصوصية فلا وجه له، وإنما يختص بها إذا ورد الأمر عند مشاهدة الفعل كأن يراه يأكل⁸⁸ فيقول له كفر.

[35] قوله في الثالث: [5.b] لا باعتبار الوقوع

وذلك من أفطر أو رجل أفطر أو لو أنّ رجلاً أفطر فما عليه؟ أو الإفطار ما فيه؟، وبالجمله ما لم ينسب إلى فاعل بخصوصه كأفطرت أو أفطر زيد أو أريد أن أفطر غداً أو يريد، وذلك لأنّه جعل مدار القسمة على العلم وعدمه، والعلم إنما يعقل تعلقه بما يقع⁸⁹ في الخارج.

[36] قوله:⁹⁰ [6.b] فالظاهر العموم إذ عدم الانصراف...إلخ

يريد أنّ الذي ينبغي حينئذٍ حمله على العموم، لأنّه إن لم يحمله عليه فإنما أن يلغى أو يحمله على الخصوص وكلاهما محال. أمّا الأوّل فلاستلزامه بطلان التكليف بهذه الخطابات مع ثبوت التكليف بالأخذ بها. وأمّا الثاني فلاستلزامه الترجيح بلا مرجح لعدم العلم بترجيح بعضها في نفس الأمر. وبذلك يندفع ما أورده الشارح⁹¹ على التعليل من أنّه لا يقتضي كون العموم ظاهراً، ولا ربط لهذه الدعوى به إذ حاصله وجوب حمله على العموم.

84 KG missing و

85 KG: عموم

86 KG: تقول

87 M: هو

88 M: باطل

89 M: وقع

90 KG missing قوله

التحقيق والبيان ج 2 صص 5-13

[33] Like others, what al-Tūnī said applies to all types of answers. So, in al-Tūnī's first two scenarios [b.1 and b.3], if the answer takes the form "Whoever does so-and-so, must do so-and-so" or "Doing so-and-so, necessitates doing so-and-so," then there is no doubt that it should be considered universal, irrespective of what we know about the petitioner and the respondent. Details about the petitioner and the respondent are only relevant if the answer takes the form "Do so-and-so." In al-Tūnī's third scenario [b.5], if the respondent were to say "Do so-and-so" on account of his knowledge that the petitioner is the one who was involved in the incident, but the petitioner was too embarrassed to say so clearly when he posed the question, then there is no doubt that the answer cannot be considered universal. In fact, this happens a lot so the respondent will say "As for you, do so-and-so and do not worry about anyone else." This can only be considered universal if the answer is phrased as a universal statement like "Whoever does so-and-so must do so-and-so" or "Doing so-and-so necessitates so-and-so" or "A man who does so-and-so must do so-and-so." This argument, which was mentioned earlier, is unnecessary to establish the universality of the answer in the first two scenarios [b.1 and b.3].

[34] Then A'rajī turns his attention to al-Tūnī's explanation of the first scenario [b.2].¹⁶ He says the answer only pertains to the incident in question (whether the incident itself was qualified or unqualified). At most, the fact that the respondent knew what happened means his answer pertains to both what is unqualified in the incident in question (e.g. breaking the fast) and what is particular (e.g. breaking the fast by eating) equally. There is no basis to claim that it only pertains to the latter. It is only in cases where the respondent makes an imperative statement after seeing what happened – e.g. he says "Offer expiation" after seeing a man break his fast by eating – that his statement can be said to apply to what is particular (and nothing else).

[35] Regarding al-Tūnī's third scenario [b.5]¹⁷ (i.e. when a question is not posed with regard to the occurrence of the incident), A'rajī gives four examples: "One who broke his fast," "A man broke his fast," "If a man broke his fast, what must he do?" and "What is the punishment for breaking the fast?" In sum, this scenario involves actions that are not attributed to a particular agent (e.g. "I broke my fast" or "Zayd broke his fast"). This distinction is due to al-Tūnī's typology that is based on the respondent's knowledge or lack thereof, and one can only know (or not know) something that has actually taken place.

[36] Commenting on al-Tūnī's explanation of why, *prima facie*, the answer should be understood as a universal statement,¹⁸ A'rajī says, if it is not understood as a universal statement, then either it is null or it should be considered particular, both of which are impossible. It cannot be null because that would entail the invalidity of any obligation (*buṭlān al-taklīf*) before these addresses despite the fact that the obligation to act upon them has been unanimously accepted. And it cannot be considered particular because that would entail prioritising something for no reason (*al-tarjīh bi-lā murajjih*). Thus al-Abyārī's explanation is shown to be incorrect: it does in fact have to be considered universal.¹⁹ It has no connection to this claim since the gist of this claim is that it is necessary to understand it as a universal statement.

[37] ولقائل: إن كان العموم ظاهراً فالحمل عليه لازم لوجوب⁹² الأخذ بالظواهر ولم يحتاج في ذلك إلى حجة، وإن لم يكن ظاهراً منعنا انحصار القسمة في هذه الثلاثة، بل هنا رابع، لا إلغاء ولا خصوص ولا عموم، بل نتوقف في الفتوى ونحتاج في العمل. فإن أردتم بالإلغاء ما يشمل هذا منعنا بطلانه، وذلك لأن مبنى هذا الإيراد على أن المراد بالظهور من قوله فالظاهر العموم كون العموم حينئذ هو الظاهر المتبادر المنساق، ولا ريب أن ما ذكره من التعليل لا ينهض لإثبات ذلك، وإنما يجيء من قبل ترك⁹³ الاستفصال لاستقامة الطريقة وجريان العادة بأنه متى كان متعلق الحكم خاصاً سُئل عنه ولا يترك السؤال إلا إذا كان عاماً، وقد عرفت أنه إنما أراد ما⁹⁴ ذكرنا من إنبغاء⁹⁵ الحمل على العموم، وأقصى ما هناك أنه كان ينبغي له أن يقول فالواجب أو فاللازم لقضاء الدليل بناءً على تماميته بذلك، لكن تلك⁹⁶ له عادة يعبر عن الثابت المعلوم بالظاهر كما سيقول والظاهر من المرتضى، وهو يراه يصرح بذلك، كل ذلك للاستظهار.

[38] قوله: [C] إذا سُئل عليه السلام... إلخ

مدار القسمة في هذا التقسيم على كون الجواب عاماً في نفسه لأنه⁹⁷ من ألفاظ العموم كما في القسم الأول، أو عاماً بملاحظة ترك الاستفصال كما في الثاني، أو خاصاً لخصوص متعلقه وهو السؤال كما في الثالث، من غير فرق بين كون المسئول عالماً بالواقعة المسئول عنها أو غير عالم، أو بين كوننا عالمين بعلمه أو محتملين أو قاطعين بعدمه، أو بين كون السؤال عن الواقعة باعتبار وقوعها أو لا باعتبار الوقوع. وهذا بخلاف تقسيم المصنف، فإن مداره كان على كون السؤال عن الواقعة باعتبار وقوعها أو لا باعتباره وعلى علمنا بعلم المسئول بذلك أو احتمالنا لذلك، ولم يتعرض المصنف للثالث من هذه الأقسام لأنه في تقسيم من ظن أنه من ترك الاستفصال وليس هذا منه في شيء لمكان الاختصاص، وأما السيد⁹⁸ فليس غرضه ذلك بل تقسيم ما يقع في الجواب فوجب عليه ذكره.

92 M: بوجوب

93 M: بترك

94 M: به ما

95 M: انتفاء

96 M missing تلك

97 M: لكونه

98 M missing السيد

[37] One might argue that, if the answer is *prima facie* universal, then we must consider it universal due to the necessity of acting upon the *prima facie* meaning – this does not require any further evidence. If, however, the answer is not *prima facie* universal, then we cannot restrict the typology to these three cases; there is a fourth case: the answer is not null, particular, or universal; rather, we should withhold judgement and exercise caution (*natawaqqaf fi l-fatwā wa-nahtāt fi l-ʿamal*). In response, A'rajī argues that if what is meant by null is this fourth option, then it is not invalid. That is because this objection is based on the notion that the meaning of “*prima facie*” in al-Tūnī's claim that “*prima facie* the answer should be understood as a universal statement” is that the universal sense of the answer is what is apparent and what occurs to one's mind immediately. There is no doubt that the reason al-Tūnī gave for this view does not substantiate it. Rather, it is like refraining from seeking clarification due to the common practice of making an inquiry when the answer pertains to something in particular. One does not refrain from inquiry unless the answer is universal. Al-Tūnī was only talking about the fact that it must be considered universal (*inbiḡhā' al-ḥaml 'alā l-'umūm*). At most, he should have said “what is necessary (*al-wājib*)” or “what is required (*al-lāzim*),” but this is simply al-Tūnī's style: he uses the term “*prima facie* (*al-ẓāhir*)” for what is well-known. For example, when he sees al-Murtaḍā state something explicitly, he will refer to it as “al-Murtaḍā's well-known (*al-ẓāhir*) view.”

[38] Regarding al-Murtaḍā's remark “If he (peace be upon him) is asked...” [c]²⁰ A'rajī states that this typology revolves around the answer being (a) universal in and of itself because its wording is universal (e.g. anyone who breaks the fast must offer expiation); (b) universal on account of the respondent refraining from seeking clarification (e.g. if the Prophet were asked about someone who broke the fast and he did not seek clarification about how the fast was broken, rather he said, “He must offer expiation”); or (c) particular due to the question being particular. The question of whether the respondent knew about the specific incident, whether we know (or suspect) that the respondent knew (or we are certain that he did not know) about the specific incident, and whether the question was asked vis-à-vis the incident are entirely irrelevant in al-Murtaḍā's typology. By contrast, al-Tūnī's typology revolves around whether the question was about the incident vis-à-vis its occurrence or not, and whether we know (or suspect) that the respondent knew that. Al-Tūnī did not consider (c) because it is unrelated to “refraining from seeking clarification” since the question itself is particular. Al-Murtaḍā, on the other hand, mentioned (c) because his typology was based on the nature of the answer.

[39] ثم المراد بقوله عن حكم المفطر ما يعم الدال على ماهية الإفطار أو نوع خاص منها كالأكل، ليصح أن يكون مقسماً للثالث فإنه خاص بالخاص، وبالأول ما يشمل⁹⁹ العام لكل فرد والخاص بفرد معين أو غير معين ليصح أن يكون مقسماً للثاني فإنه خاص بغير العام، نعم الأول يقع جواباً عن الجميع فيكون في بعضها مطابقاً وفي بعضها جواباً وزيادة، فالعام مما يدل على ماهية الإفطار وقولك¹⁰⁰ ما على المفطر؟ أو من أفطر فما عليه؟، والخاص مما يدل عليها كقولك رجل أو زيد أفطر فما عليه؟ أو أفطرت فما علي؟، وما يدل على نوع خاص منها كأن تقول ما يجب بالأكل؟ أو ما على الآكل؟ أو من أكل أو لو أن رجلاً أكل أو رجل أكل أو زيد أكل فما عليه؟ أو أكلت فما علي؟، فإذا قال في الجواب تجب¹⁰¹ به الكفارة أو عليه الكفارة أو عليك، اختص بالمسئول¹⁰² عنه -أعني الأكل- ولا يخطئه إلى غيره من أنواع المفطرات، وإذا قال من أفطر فعليه أو على المفطر كذا عم لكونه صيغة عموم، وعن مثله احتراز بقوله في الثالث والجواب مثله.

[40] قوله: [4.0c] فيحل محل الفعل

يريد إذا كان السؤال خاصاً والجواب مثله كما مثلنا كان جوابه عليه السلام بمنزلة فعله بالخصوص،¹⁰³ وذلك أن فعله -عليه السلام- وإن كان مدركاً للأحكام بواسطة قاعدة التأسي كقوله إلا أنه يختص بتلك الواقعة ولا يتعداها إلى غيرها مما يشاركها في الجنس، بخلاف قوله فإنه بحسب الوضع، فإن كان موضوعاً للعموم عم وإلا لم يعم.

[41] بل ربما وقع في كلام السيد¹⁰⁴ ما يدل على عدم جواز تخطيها إلى نظائرها مما يشاركها في النوع، قال في الذريعة في الكلام على فعله صلى الله عليه وآله: «وفعله عليه السلام لا يخلو¹⁰⁵ من وجهين: إما أن يكون الوجه الذي وقع عليه غير معلوم، نحو أن يأخذ من يد رجل ملكاً¹⁰⁶ من غير أن يعلم جهة أخذه بعينها، فيكون ذلك مجملًا، أو أن يعلم الوجه، مثل أن يقضي بالشاهد واليمين، وهذا حكم في عين لا يجب تعيينها ولا تخطيها»¹⁰⁷. قال: «ولولا أن الدليل قد دلّ على تساوي كل المدعين والمدعي عليهم في هذا الحكم، لما عدّينا هذا الحكم إلى غير موضعه»¹⁰⁸.

[42] وحينئذ فلا يتم التشبيه المذكور ههنا لأن الجواب¹⁰⁹ الجواب الخاص يتعدى فيه من الواقعة إلى نظائرها حتى يدل في المثال على وجوب الكفارة على كل أكل ولا يحتاج إلى دليل خارجي كما ذكر في الفعل، نعم لا يتعدى إلى ما يشاركها في الجنس كالتفطير فلا¹¹⁰ يدل على وجوبها على من أفطر بغير الأكل.

99 شمل KG:

100 KG missing و

101 M: يجب

102 M: المسئول

103 M: في الخصوص

104 KG mistakenly includes السيد after ح

105 KG: يخلو

106 M: مكان

الذريعة ج 1 ص 291

الذريعة ج 1 ص 291

الواجب M:

ولا M:

[39] According to A'rajī, what al-Murtaḍā meant by, “if he is asked about someone who broke his fast (*‘an ḥukm al-muḥṭir*),” [c]²¹ is broader than the quiddity “breaking the fast” or a particular way of breaking the fast (e.g. eating). This way, it is a “meta-category” (*maqsam*) encompassing the third sub-category too, which is exclusively specific (*khāṣṣ bi-l-khāṣṣ*). By the first, al-Murtaḍā meant what includes the universal for each individual, what is particular to every specific individual, and what is not specific. This way, it can be a *maqsam* for the second, which is non-universal specific (*khāṣṣ bi-ghayr al-‘āmm*). Yes, the first is an answer for all, so it is, in some, corresponding, and in others an answer and an addition. So the universal is what points to the quiddity “breaking the fast” and the question “What should one who breaks the fast do” or “What should one who broke his fast do?” The particular is what points to it, like “A man” or “Zayd broke his fast so what should he do?” or “I broke my fast so what should I do?” And what points to a particular type of it, like saying “What does eating necessitate?” or “What is the consequence of eating?” or “One who ate” or “If a man ate” or “A man ate” or “Zayd ate so what should he do?” or “I ate so what should I do?” If the respondent answers “It necessitates offering expiation” or “It requires expiation” or “You must offer expiation,” then the answer is particular to the question (e.g. eating); it does not extend to other ways of breaking the fast. If, however, the respondent says, “Whoever breaks his fast must...” or “One who breaks his fast must,” then the answer is universal because of the way the answer was worded. This is what al-Murtaḍā meant when he said, with respect to the [c], “The answer is like the question (i.e. the answer is particular because the question was particular).”²²

[40] As for al-Murtaḍā's claim that “It should be treated the way we treat Prophet's action (*fa-yahillu maḥall al-ḥi'*),”²³ according to A'rajī, he means, if the question is particular, so is the answer. In the examples above, the Prophet's answer is analogous to a specific action of his. Based on “the principle of emulation” (*qā'idat al-ta'assī*), both the action and the speech of the Prophet are a valid basis for law; however, because his action is particular to a specific incident, it cannot be extended to other similar incidents involving the same genus (*jins*). By contrast, his speech conforms to the ordinary rules of language (*wad'*): if he uses an expression that was coined for a universal idea, then it is universal, and if not, then not.

[41] Al-Murtaḍā himself may have understood that the answer cannot be extended to cases involving the same type (*naw'*). In his discussion of the Prophet's action in *al-Dhari'a*, al-Murtaḍā says the reason for his action is either known – such as if he took an object from someone without us knowing why – or unknown – such as if he were to issue a judgement on the basis of eyewitness testimony and oaths. In the former case, his action remains ambiguous; in the latter case, it is a judgement in a specific case that cannot be pinpointed and then extended (*lā yajib ta'ayyunu-hā wa-lā takhaṭṭihā*).²⁴ Moreover, al-Murtaḍā argues, if not for the fact that we know the law of evidence applies to every plaintiff and defendant, we would not extend the Prophet's aforementioned judgement (on the basis of eyewitness testimony and oaths) to other similar instances.²⁵

[42] So the example that al-Murtaḍā cites to illustrate the issue is not a good example because, in our case, the specific answer implies an extension from the particular incident to similar cases such that it entails the obligation to offer expiation for every kind of food without the need for external evidence, as is the case with actions. It does not, however, extend to everything belonging to the same genus (i.e. *taftīr*): it does not indicate that someone who breaks their fast by doing something other than eating must also offer expiation.

[43] لكنّه قال هناك بعد ما حكينا عنه بلا فصل ما نصه: «وكذلك لا يجوز أن يحتج فيمن أفطر في شهر رمضان بأي وجه كان فطره فعليه الكفارة»¹¹¹ بما روي: أن رجلاً أفطر في شهر رمضان فأمره عليه السلام بالكفارة لأن ذلك¹¹² قضية في عين لا يجب عمومها¹¹⁴،¹¹³ وهذا كما ترى ظاهر في أن المحذور¹¹⁵ إنّما هو التخطي عن النوع لا عن خصوص الواقعة، فيلأتم¹¹⁶ ما هنا لكن يبقى التناقض بينه وبين ما قبله.

[44] ثم هنا باب آخر يسمّى عندهم بقضايا الأعيان وقضايا الأحوال أيضاً لا يعم وكثيراً ما يشتبه بالباب الأول فيحكم فيه بالعموم كالأول، ويردّ عليهم المحققون العارفون بالفصل بين المقامين بأنّ هذه قضية في واقعة وقضية في عين. وهذا وإن لم يدوّن له أكثر أهل الأصول باباً مستقلاً إلا أنّه كثيراً ما يقع في كلام الفقهاء وأهل الاستدلال. والفرق بين البابين أن الأول عبارة عن حكمه - عليه السلام - بعد السؤال عن قضية يحتمل وقوعها على وجه متعددة أو على القضية المحتملة وإن لم يكن هناك سؤال كما في قضية ابن غيلان، فإذا أرسل الحكم من غير استفصال عن كيفية القضية دلّ على العموم، والثاني عبارة عن القضية التي يحكيها الصحابي وليس فيها سوى فعله - صلى الله عليه وآله - كترديده ما عرّف¹¹⁷ لما أقرّ على نفسه بالزنا، وصلاته على النجاشي، وتكبيره¹¹⁸ على حمزة سبعا،¹¹⁹ أو فعل من تعلق به الحكم سواء كان ذلك الحكم بتقريره عليه كواقعة أبي بكر¹²⁰ أو بأمره فيه بأمر كالمثال الذي¹²¹ حكيناه عن السيد أخيراً مع احتمال وقوع ذلك الفعل على وجه شتى، وبالجملة فتعلق الحكم في الأول هو القدر المشترك وفي الثاني خصوص الواقعة، ومن ثم لم يعم ولا يتخطى به إلى محل النزاع، فلا يستدل بالمثل الثلاثة الأول على شرعية التردد والصلاة على الغائب والسبع، ولا بقضية أبي بكر¹²² على جواز المشي وإن كان كثيراً، ولا بالأخير على وجوب الكفارة في كل مفطر، وتام البحث في الكتاب.

[45] قوله: [d] إلا أنّ مثاله في تنقيح المناط... إلخ

يريد أنّ مناط الحكم في المثال الذي ضرب السيد للقسم الثاني وحكم فيه بالعموم لمكان ترك الاستكشاف منقّح، فعمومه لتنقيح المناط لا لترك الاستكشاف كما ظن. قلت: ليت شعري، ماذا أراد بالعموم الذي ادّعى ثبوته في المثال بالتنقيح، أشمول¹²³ الكفارة للإفطار وغيره على ما يقتضيه دعوى التنقيح؟ فإنّ شمول الحكم للتنقيح شعبة من شعب¹²⁴ القياس، غاية ما هناك أنّه العلة المستنبطة فيه قطعية، أو شمولها لأنحاء الإفطار؟

111 is missing from the edited copies of *al-Dhari'a*. Gurji notes its appearance in one

الذريعة إلى أصول الشريعة ج 1 ص 291 ح 11 MS. See

112 Edited copies of *al-Dhari'a* include after كما قلناه ذلك.

113 M missing عموماً

114 الذريعة ج 1 ص 291

115 KG: محذور

116 M: فلا يعم

صحيح البخاري ج 8 ص 24 117

تكبير: KG 118

بحار الأنوار ج 78 ص 349 119

صحيح البخاري ج 1 ص 190 بكر: KG 120

الذي M missing 121

بكر: KG 122

الشمول: M 123

شعبة: M 124

[43] As A'rajī notes, immediately thereafter in *al-Dharī'a*, al-Murtada says one cannot adduce the narration according to which the Prophet ordered a man who had broken his fast in Ramaḍān to offer expiation, to argue that, however someone breaks the fast, they must offer expiation – that is a specific case that cannot be generalised (*qaḍiyyatun fī 'ayn lā yajib 'umūmuhā*).²⁶ *Prima facie* what this means is that it is impermissible to extrapolate to another type (*naw'*), but not to another incident. It agrees with that is here, but it contradicts what he said earlier.

[44] There is another issue here known as *qaḍāyā l-a'yān* and *qaḍāyā l-aḥwāl* – these cannot be considered universal either. However, because this issue is often confused with the first issue (i.e. relating a scenario – *ḥikāyat al-ḥāl*), it is considered universalizable. But astute scholars who understand the difference between the two issues say that this issue involves a specific incident and object (*qaḍiyya fī wāqi'a* and *qaḍiyya fī 'ayn*) that cannot be considered universal. Most Uṣūlīs have not composed an independent chapter about this issue, but jurists refer to it frequently in their writings. The difference between the two issues can be summarised as follows: in the first, the Prophet gives an answer after a question has been posed about an issue that could have occurred in one of several ways, or the Prophet addresses such an issue without a question having been posed at all (such as in the case of Ibn Ghaylān). In this case, if he issues a judgement without first seeking clarification about how the incident occurred, his judgement should be considered universal. The second issue involves a Companion relating something that the Prophet did – such as when he discouraged Mā'iz b. Mālik al-Aslamī from confessing to illicit sex or when, during the funeral of his uncle Ḥamza, he said “*allāhu akbar*” seven times instead of five – or a Companion relating something that the person being judged did, whether the judgement takes the form of tacit approval (*taqrīr*) – such as in the case of Abū Bakra al-Thaqafī – or an imperative statement – such as in al-Murtaḍā's example of the Prophet commanding a man who had broken his fast to offer expiation despite the fact that the man could have broken his fast in several different ways.²⁷ In sum, in the first issue, the judgement pertains to the “common denominator” (*al-qadar al-mushṭarak*, e.g. breaking the fast irrespective of how), whereas, in the second issue, it only pertains the specific incident – it cannot be universal and therefore it is unrelated to the bone of contention. In other words, the case of Mā'iz cannot be adduced as evidence of a legal obligation to discourage people from confessing to illicit sex, and the case of Ḥamza cannot be adduced as evidence of the correct way to perform the funeral prayer.

[45] In the last section of his commentary,²⁸ A'rajī explains al-Tūnī's objection to al-Murtaḍā's example of (b) in the aforementioned typology (i.e. if the Prophet were asked about someone who broke the fast and he did not seek clarification about how the fast was broken, rather he said, “He must offer expiation”). According to al-Tūnī, “He must offer expiation” should be considered universal, but not because the Prophet refrained from seeking clarification; rather, it is on account of *tanqīḥ al-manāṭ* (honing down the basis for any particular law) that we know the statement is universal. A'rajī does not seem to have been convinced by al-Tūnī's explanation and in turn seeks further clarification by asking: Does he mean that (a) the obligation to offer expiation encompasses both the act of breaking the fast and other (unrelated) actions, which is what *tanqīḥ al-manāṭ* entails?²⁹ Or does he mean that (b) the obligation to offer expiation encompasses various ways of breaking the fast?

[46] فإن أراد الأول فقد أبطل، وأي مناسبة بين الإفطار وغيره من الأفعال ليدعي القطع بتحقيق علّة ثبوت الكفارة في الإفطار في غيره، مع أنّ السيد لا يريد ذلك بالعموم، وكيف يحسن الاستكشاف بعد التصريح بالإفطار عن إرادة غيره؟ وبالجملّة فبطلانه غنيّ عن البيان. وإن أراد الثاني كما هو الظاهر فليس هناك تسوية حكم من شيء ذكر ونص عليه بالحكم إلى آخر لم يذكر ليصح دعوى التنقيح، بل نسبة جميع أنحاء الإفطار إلى متعلق الحكم - أعني مفهوم الإفطار - على حد سواء، على أن التفاوت ما بين المفطرات كالجماع والأكل والإرتماس ظاهر فكيف يدعي التنقيح؟

[47] وقد يقال أن ضمير عليه في الجواب راجع إلى ذات الرجل الواقع في السؤال وقضية ذلك اختصاص الحكم بفعله وعدم تخطيه إلى إفطار غيره، لكن تنقيح المناط قاض¹²⁵ بتجاوزه لعلنا بأنّه لا دخل لخصوص المفطر في إيجاب الكفارة ولا فرق بين كونه زيداً أو عمرواً¹²⁶ أو بكراً، وحينئذ فقد حملنا إفطار غير المذكور على المذكور للتنقيح فكان التنقيح هو مدرك العموم لا ترك الاستكشاف، والظاهر¹²⁷ أن هذا مراده بدليل ما سيجيئ في بابه.

[48] وفيه أنّ استواء المكلفين في الحكم لما كان معلوماً بالنص والإجماع لم يحتج في التعميم إلى دعوى قياس أو تنقيح، ومن ثمّ لم ترهم يوماً سيّروا¹²⁸ الحكم من فرد إلى آخر بالقياس، وإنّما يحتاجون إليه في التسوية من جنس إلى آخر أو صنف إلى غيره¹²⁹ كحمل النبيذ على الخمر، والأكل على الجماع،¹³⁰ على أنّ السيد إنّما يريد بالعموم الذي أثبتته بترك الاستكشاف شمول أنحاء المفطرات لا أفراد¹³¹ المفطرين، وهذا¹³² واضح.

125 M missing قاض

126 M: عمرا

127 M: فإظهار

128 KG: incorrectly سررا

129 KG: غير

130 KG: الجامع

131 M: لأفراد

132 M: كما هو

[46] According to A'rajī, if al-Tūnī meant (a), then this is clearly invalid due to the lack of any similarity (*munāsaba*) between breaking the fast and other acts – *tanqīḥ al-manāṭ* requires the existence of such similarity. Not to mention the fact that this is not what al-Murtaḍā meant when he said (b) should be considered universal: if the petitioner asked about breaking the fast explicitly, then it would not make any sense for the Prophet to seek clarification about an unrelated act (e.g. hitting). If, however, al-Tūnī meant (b) – which is more likely – then it still has nothing to do with *tanqīḥ al-manāṭ* since all the different ways of breaking the fast are known and there is no difference among them vis-à-vis the subject of the rule (*muta'llaq al-ḥukm*) (i.e. the concept of breaking the fast) – they are equal in that respect despite the obvious difference between, for example, eating and sex.

[47] Then A'rajī considers the following argument: What if the third-person singular masculine pronoun in the expression “*alayhi l-kaffāra*” refers to the individual himself (i.e. expiation is incumbent upon *him*)? In this case, it would pertain to his action in particular and no other instance of breaking the fast. Nevertheless, based on the fact that the specificity of any individual (e.g. Zayd, 'Amr, Bakr, etc.) has no bearing on the obligation to offer expiation, we could extend the rule to other individuals on the basis of *tanqīḥ al-manāṭ*. Thus, we could treat the breaking of the fast of someone who is not mentioned just like the breaking of the fast of someone who is mentioned, but the validity of the extrapolation would be rooted in *tanqīḥ al-manāṭ*, not refraining from seeking clarification. This appears to be what al-Tūnī actually meant.

[48] In response, A'rajī argues that explicit texts and consensus affirm that the specificity of any individual (e.g. Zayd, 'Amr, Bakr, etc.) has no bearing on the obligation to offer expiation, so one does not need to resort to *qiyās* or *tanqīḥ* to establish the universality of the statement. Moreover, no one uses *qiyās* to extend a rule from one individual to another (e.g. from Zayd to Bakr); *qiyās* is used to extend a rule from one genus (*jins*) to another (e.g. from grape wine to date wine or from eating to sex). This, A'rajī concludes, is in addition to the fact that, when al-Murtaḍā inferred universality from refraining from seeking clarification in (b), he clearly meant to encompass the different ways of breaking the fast – he was not equating each individual.

Endnotes

- 1 It will become apparent in A'rajī's commentary that this question was first raised by al-Shāfi'ī and debated by Sunni Uṣūlis. For a later Sunni detailed exposition of the debate, see al-Zarkashī, *al-Baḥr al-muḥīṭ fi uṣūl al-fiqh* (Kuwait, 1992/1413), v. 3, pp. 148–154.

- 2 The full statement is:

ترك الاستفصال في حكاية الحال مع قيام الاحتمال ينزل منزلة العموم من المقال.

See al-Fāḍil al-Tūnī, *al-Wāfiya fi uṣūl al-fiqh* (Qum, 1424/2003), pp. 114–115. Al-Juwaynī (d. 478/1085) attributes this view to al-Shāfi'ī. See al-Juwaynī, *al-Burhān fi uṣūl al-fiqh* (Beirut, 1418/1997), v. 1, p. 122.

- 3 See, for example, al-Tirmidhī, *Sunan al-Tirmidhī* (Beirut, 1403/1983), v. 2, p. 298.
- 4 See, for example, Abū Dāwūd al-Sijistānī, *Sunan Abī Dāwūd* (Beirut, 1410/1990), v. 2, p. 115.
- 5 See al-Fakhr al-Rāzī, *al-Maḥṣūl fi 'ilm uṣūl al-fiqh* (Beirut, 1412/1991), v. 2, pp. 386–388.
- 6 See al-'Allāma al-Ḥillī, *Tahdhīb al-wuṣūl ilā 'ilm al-uṣūl* (London, 1421/2001), p. 133.
- 7 See al-Ghazālī, *al-Mankhūl min ta'liqāt al-uṣūl* (Beirut, 1419/1998), p. 223.
- 8 Perhaps al-Abyārī (d. 718/1221) is intended. See al-Abyārī, *al-Taḥqīq wa-l-bayān fi sharḥ al-Burhān fi uṣūl al-fiqh* (Kuwait, 1434/2013), v. 2, pp. 5–13.
- 9 A'rajī appears to be referring to a hadith related by Abū Hurayra and cited in al-Bukhārī in which a man tells the Prophet that he had sex while fasting during Ramadan. In his reply, the Prophet asks him if he

can free a slave, fast for two consecutive months, or feed sixty needy people. When the man says no, the Prophet gives him some dates and instructs him to donate them as expiation for his sin. A'rajī's point is that, in this case, the Prophet's answer cannot be considered universal because he knew exactly how the man broke his fast. Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut, 1401/1980), v. 1, pp. 235–236.

- 10 See, for example, al-Qummī, *Tafsīr al-Qummī* (Qum, 1435/2014), v. 1, p. 267.
- 11 At the time of his conversion to Islam, Ibn Ghaylān was married to ten women. The Prophet told him to keep four wives and divorce the rest without asking whether he married them simultaneously or consecutively. Ibn Māja, *Sunan Ibn Māja* (Beirut, n.d.), v. 1, p. 628. Because the Prophet did not ask whether he married them simultaneously or consecutively, the circumstances of his marriages have no bearing on which wives he can keep. Had the circumstances been relevant, the Prophet would have asked how the marriages took place.
- 12 This is how it appears in KG and M; however, al-Sayyid Muḥammad Ḥusayn al-Raḍawī al-Kashmīrī's edition of *al-Wāfiya* has "al-ʿAllāma chose this [opinion]" (*wa-ikhtārahu al-ʿallāma*). Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 115. As al-Kashmīrī notes, all of the other manuscripts that he consulted have "al-ʿAllāma chose the first [opinion]" (*wa-ikhtāra l-awwal al-ʿallāma*); A'rajī was quoting one of these manuscripts.
- 13 Al-ʿAllāma al-Ḥillī, *Tahdhīb*, p. 133.
- 14 The author appears to be summarising al-ʿAllāma's position. The full quote is:
 إن علم أو ظن أنه صلى الله عليه وآله لم يعلم خصوص الحال وجب القول بالعموم، والا لبين صلى الله عليه وآله الفرق، وإن لم يعلم ذلك لم يحكم بالعموم، لاحتمال أنه صلى الله عليه وآله عرف خصوصية الواقعة، فترك الاستفصال بناء على معرفته صلى الله عليه وآله.

See al-ʿAllāma al-Ḥillī, *Nihāyat al-wuṣūl ilā ʿilm al-uṣūl* (Qum, 1431/2009), v. 2, p. 248.

- 15 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 115.
- 16 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 115.
- 17 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 115.
- 18 Al-Fāḍil al-Tūnī, *al-Wāfiya*, pp. 115–116.
- 19 A'rajī does not mention al-Abyārī explicitly, rather, he uses the term "*al-shāriḥ*," which we have understood as a reference to *Shāriḥ al-Burhān* [see #8 above]; however, it is unclear to which of al-Abyārī's arguments A'rajī is referring. For the entire discussion, see al-Abyārī, *al-Taḥqīq wa-l-bayān*, v. 2, pp. 5–13.
- 20 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 116.
- 21 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 116.
- 22 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 116.
- 23 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 116.
- 24 Al-Sharīf al-Murtaḍā, *al-Dharīʿa*, v. 1, p. 291.
- 25 Al-Sharīf al-Murtaḍā, *al-Dharīʿa*, v. 1, p. 291.
- 26 Al-Sharīf al-Murtaḍā, *al-Dharīʿa*, v. 1, p. 291.
- 27 For the examples of Abū Bakra al-Thaqafī, Māʿiz b. Mālik al-Aslamī and Ḥamza b. ʿAbd al-Muṭṭalib see al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, v. 1, p. 190; v. 8, p. 24; al-Majlisī, *Biḥār al-anwār* (Beirut, 1403/1983), v. 78, p. 349 respectively.
- 28 Al-Fāḍil al-Tūnī, *al-Wāfiya*, p. 116.
- 29 For a brief overview of the difference between *tanqīḥ al-manāṭ* and *qiyās*, see Dahīnī, "Nazariyyat tanqīḥ al-manāṭ ʿinda l-imāmiyya," *al-Ijtihād wa-l-tajdīd* 25 (1434/2012), pp. 181–206. Twelvers reject *qiyās* because the common factor between the original case and the new case is not known with certitude; however, if the common element is stated explicitly in a proof-text, then it is acceptable. See further Gleave, "Imāmi Shīʿi Refutations of Qiyās," in *Studies in Islamic Legal Theory* (Leiden, 2002), pp. 267–292. What is noteworthy here is that A'rajī reluctantly accepts al-Tūnī's explanation, indicating that if the *ratio legis* was not known with certitude, he would have considered it invalid *qiyās*.

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CHAPTER 3

Can Non-Muslims Become Experts in Islamic Law? Two Sections from the *Kawāshif al-ḥujub ‘an mushkilāt al-kutub* of al-Māzandarānī (d. 1285/1868)

Amin Ehteshami and Hassan Rezakhany

Introduction

Not much is known of Muḥammad Ṣāliḥ al-Māzandarānī's life (hereon Māzandarānī). His name suggests that he descended from the Mazandaran region in the north of Iran. His date of birth is unknown; in light of a report that at the time of his death in 1285/1868 he was around eighty-years old, he was likely born at the beginning of the thirteenth century AH, which coincides with the first decades of the Qajar dynasty (1789–1925).¹ In addition to receiving seminary training in Isfahan, he studied in Karbala and Najaf with some of the prominent scholars of the time, including Muḥammad Sharīf al-Māzandarānī (d. 1245/1829), Mūsā Kāshif al-Ghiṭā' (d. 1242/1826) and his brother 'Alī Kāshif al-Ghiṭā' (d. 1253/1837). After reaching the level of juristic expertise (*ijtihād*) he returned to Isfahan where he had a distinguished career.²

Māzandarānī has received scant attention in biographical dictionaries and none of his writings are available in print. Besides a few brief treatises on legal topics and a work comprised of his notes (*taqrīrāt*) taken from the lectures of his teacher Sharīf al-'Ulamā' (d. 1245/1829),³ Māzandarānī wrote two books on jurisprudence. The first, titled *Uṣūl al-fiqh* ('On Jurisprudence'), was written early in his career; it encompasses only two chapters, one on linguistic postulates and theories of scriptural interpretation (*alfāz*), and the other on rational proofs (*adilla 'aqliyya*). The book's unorganised presentation, a lack of uniform style, and the fact that it was left unfinished has led some to suspect that it was written as a preliminary to his more elaborate work on jurisprudence, *Kawāshif al-ḥujub 'an mushkilāt al-kutub* ('Removing the Veils from Obscurities of Books').⁴ Māzandarānī does not mention when he completed this work, although in a biographical work 1247/1832 is reported as a completion date.⁵

As Māzandarānī remarks in the preface, compared to other texts of jurisprudence, *Kawāshif al-ḥujub* is a book of medium length. It is organised in 150 sections, each dedicated to a particular topic; the sections vary in length, some only a few lines, others running for pages. Each section consists of a 'veil' (*ḥijāb*) followed by Māzandarānī's corresponding 'removal' (*kashf*) of it. Each veil constitutes a confusion about some matter of jurisprudence, which Māzandarānī attempts to remove, thereby unveiling the truth of the matter. Occasionally he characterises the questions as spurious or sophistic arguments. Although *Kawāshif* addresses major topics often discussed in the texts of jurisprudence, the arrangement of the sections does not follow the usual order. For instance, in contrast with the *Ma'ālim al-dīn* – a widely-read book that Māzandarānī was familiar with – *Kawāshif al-ḥujub* does not begin with a discourse on knowledge followed by chapters dedicated to topics such as linguistic postulates and theories of scriptural interpretation, commands and prohibitions, consensus, prophetic reports, abrogation, legal analogy, and the

obligation of non-expert believers to follow the legal opinions of qualified jurists.⁶ Rather, Māzandarānī's chosen approach in *Kawāshif al-ḥujub* is to address various topics, often with the aim of refuting the opposing views, and without necessarily seeking to compose a comprehensive and cohesive work of jurisprudence. Indeed, as the book's title indicates, Māzandarānī explicitly seeks to address and remove the veils from the various difficulties he has encountered in other jurisprudential books.

Māzandarānī's approach to the issues he discusses in *Kawāshif al-ḥujub* is representative of the Uṣūlī jurisprudence.⁷ The Uṣūlī jurisprudential paradigm had faced a serious challenge at the beginning of the seventeenth century. Muḥammad Amīn al-Astarābādī (d. c. 1033/1623), acknowledged as the founder of the Akhbārī movement, had undermined the central juristic principles of his contemporaries.⁸ This was met with a concerted effort to counter the Akhbārī current, which had become increasingly popular. By the time Māzandarānī undertook his training in Isfahan, the Uṣūlī framework, as exemplified by Muḥammad Bāqir al-Bihbahānī (d. 1205/1791), had established itself as the dominant force in Iranian seminaries.⁹ One of the most contentious disagreements between Uṣūlīs and Akhbārīs pertained to the probative force of the Qur'an's *prima facie* sense. Māzandarānī has a section on this topic in his treatise which is included in the present study and is an illustration of his adherence to the Uṣūlī framework.

The fact that *Kawāshif al-ḥujub* still remains in manuscript form and a critical edition is yet to be published indicates its lack of widespread readership or impact.¹⁰ Māzandarānī may have been overshadowed by his influential contemporaries like Murtaḍā al-Anṣārī (d. 1281/1864), who is considered one of the most prominent Shi'ī jurists in history.¹¹ Despite its unenthusiastic reception thus far, *Kawāshif al-ḥujub* remains an appealing text. For our part, we have chosen two of its sections. Following Māzandarānī's preface to the book, Section 39 examines whether non-believers can become experts in Islamic law; Section 12 is on the probative force of the *prima facie* sense (*ẓawāhir*) of the Qur'an.¹² It is hoped that the passages presented here will kindle the interest of a reader to pursue the entire text.

In keeping with the volume's overarching aim, we have avoided a word-for-word translation of the Arabic text; instead, the following is a close paraphrase, accompanied with commentary whenever necessary. The following edition is based on the MS #1443 of Kāshif al-Ghiṭā' Library in Najaf.

الرجوع عندنا معارض باجتماع ترجمه الرابع عندنا يبقى الرجمان الذي في المثاله سليمان عن المعارض
 فيجب ان يطلع وان قلنا ان هذا انما لم يثبت لم يكر فيه فحسب العلم وامامه المتكبر منه فلا
 فلك ان العمل لا يفرقون بين صورتين كالابن في قد ترجمه باب ربما يشهد ان ظواهر الكتاب
 لا جهة فيها كشاف ما ذكر ان كان من باب فقد الموضوع بمعنى ان الكتاب جميع ما فيه من الاشياء
 فيه انه انكار باللسان ومكابر مع الوجدان وليست شري انه كيف يمكن ان يعجز الغرض بين
 الكتاب والسنة بالقول بان الالفاظ المخصوصة اذا كانت وارده في الكتاب يكون من قبل
 المشابه وفي السنة من الحكم والحال ان الضرب في الحكم والكتاب نافذ بان منه الحكم فضلا عن
 المشابه فظاهر وان كان من باب انكار الحكم بمعنى انه ن ظواهر الكتاب غير محجة وان لم يكن
 ظواهر غير كذ لك ففيه انه مدد نوع بالاجماع فان قلت ان علمنا الاخباريين قد اذنا رغوا
 فيه ولا معنى لدعوى الاجماع في موضع النزاع قلت مضافا الى ان الاجماع عبارة عن الاتفاق
 الكاشف وهو قد يحصل من الاثنين وان خلا من الحائنه وانه لا يعبر بخلاف الاخباريه كالاعين
 بوناتهم ان الدليل لا يخص فيه بل مناد امور ففيه يحصل من تراكمها القطع بالوجه الاول
 الاجماع المنقول على لسان غير واحد من الاصحاب فان الفاضل الثوري مع كونه من الاخباريه
 قال في الوايه الاول الكتاب وجوب بنبأه والعمل به متواتر ويصح عليه وفي شرح هذا
 الكلام للسيد الخف الكاظمي وهذا اعتراض منه بدلالة الاخبار المتواتره وانغداد الأصابع
 على جوان الأخذ بكتاب الله او بظاهره مما لا ينبغي ان يقدم على انكاره ذم مسكه التا الثمره العظمه
 البالغة الى هذا لا بعد منها دعوى شذوذ الحائنه المسند الثالث اخراج اصحاب الاثمه وغيرهم

من العلما من لدن البعثة الى زماننا هذا فلم تكن المجيبة المزبورة من الامور القرون المملوكة
لديهم لما استكروا عن التكبر لان العادة قاضية بذلك في مقام التنازع والتنازع لكن اللازم باطلا
فذلك المزبور الرابع القريب فاني علمهم السلام مع اطلاعهم على الاحتجاج لم ينفق ومن البيان
ان تقريرهم السلام كفضلهم وقوله حجة الخامس الاخبار الاسم فيها بالعرض على الكتاب
فان الكتاب لو لم يكن من اقوى الادلة لما معنى للاخر بعض الدليل عليه السادس الامر بالندب والذم
في تركه لان التدبير في الاطلائ فيه ولا يفهم فيه المعنى غير وجهه جداً الساب الاولوية فان حجة بها
السنة ليست من حجة ظواهر الكتاب بالطريق الاول الى الثامن فصة ابن زبيري الشهور حيث
قال صلى الله عليه وآله ما اجهلك بلسان قومك اما تعلم ان ما لم يعقل التاسع القريب بتقرير
اخر وهو ان اصحاب الائمة عليهم السلام كثير ما يعرضون عليهم بالقرود بان الحكماء الفلاس مخالف
لظواهر الكتاب ولم يبر من احد هذا المذبح فيه بانك لا تفهمون الكتاب او انه ليس بحجة عليكم
بل يجيبون على وجه يظهر منه الوجه للخالفة وهذا تقرير مفهم عليهم السلام وقد مر ان تقريرهم
كفلكهم وقوله حجة العاشر النبوي المشهور ان تارك فكر القليل ما ان تشككم بما الرضاوا
ابداً كتاب الله وعزائي فان الظاهر استغلاذ كل من الامر من في مرحلة الاعتبار والحجة كالا
بمجيح حجاب ربما بنوهم ان المحسنات يذهب المسببات وكذلك العكس كشيء الحق عدم احباط
احباط الطاعات بالمعصية وعدم تكفير المعاصي بالطاعة لكن لا لدعوى الاستفالة العقلية بل
للاصل العقلي كالعوام كتابا وسنة فان مقتضاها اراءه جزاء كلامها فيقتضي في احباط كل
طاعة بمعصية طارية وتكفير كل طاعة لمعصية سابعة على مورد الاسباب المخصوصة في الشريعة
للزوم تخصيص العوام بعد ورود الخاص ولا ظلم من الله بعد احباط بان شرابا الخمر مشد محبطه

كواشف الحجب محمد صالح المازندراني م 1285هـ

الرسالة المسماة بكواشف الحجب
بسم الله الرحمن الرحيم وبه نتقي

الحمد لله الذي كشف الحجاب عن بصائرنا بمصاييح اليقين، وهدانا إلى مسالك النجاة بالتمسك بالعروة الوثقى والجلب المتين، وبين لنا منهاج المعارف بأحسن البيان والتبيين، وعرفنا معالم الحق بالقواعد الوافية ومحكات القوانين، وجعل الشرائع والملل تبصرة وذكرى للعالمين حتى يصل متابعوها بروضة من رياض أعلى عليين، والصلوة والسلام على من بُعث لتهذيب مناهج الدين، وتبليغ ما أنزل إليه إلى الخلق أجمعين ﴿لِيَهْلِكَ مَنْ هَلَكَ عَنْ بَيِّنَةٍ وَيَحْيَى مَنْ حَيَّ﴾¹ بشيئ مبين، محمد خاتم التبيين وسيد المرسلين، وعلى وصيه وابن عمه علي الذي ينتهي به مراد المرادين وإرشاد المرشدين، ويوضح به أحكام مشكلات الإسلام والمسلمين، وعلى عترته مطالع الأنوار وخالصة الأطهار كما نطق به القرآن المبين.

وبعد يقول العبد الآبق الجاني ابن محمد محسن محمد صالح المازندراني -أصلح الله أمر آخرته ودنياه بلّغه أقصى ما يطلبه ويتمناه- أن هذه فوائد لطيفة وقواعد² شريفة كنت دهرًا من الزمان متشوقًا إلى جمعها، وتأليفها، ونظمها، وترصيفها، ليكون لي وللطالبين منهاجاً إلى مسالك التدقيق ومعراجاً إلى مدارك التحقيق وكان يمنيني عن ذلك قلة البضاعة وفقدان الفرصة والاستطاعة لشيوع البلايا والفتن وعموم المصائب والحن، واستيلاء أهل البغي والعدوان، واستيصال أهل العلم والعرفان، إلى أن رأيت أن إنجاح الأمور على وفق المأمول يعدّ من المحال.

وهر چه آمد سال نو گفتم³ دریغ از پارسال

فقلت لنفسي أن الاشتغال بهذا الأمر الخطير أولى، واستعمال الأوقات في إبراز ما هو المكنون في الضمير أنسب وأحرى، فإنه موجب للأجر في النشأة الأخرى ولأجر الآخرة خير وأبقى.

فشرعت فيما أردته متوسطاً بين التقصير والتطويل راجياً من الله تعالى الثواب الجزيل مستعيناً به فإنه حسبي ونعم الوكيل. ولما فرغت من ترقيمه ووفقت لتتميمه،⁴ سمّيته بكواشف الحجب عن مشكلات الكتب. ولعمري إن الاسم مطابق للمسمى سيما بعد ملاحظة أن الأسماء تُنزل من السماء، ولكنه لما لم يكن مرتباً كسائر الكتب المشهورة ولا موبّأً على نحو الزُّبر المعروفة، وكان يعسر بذلك الإطلاع⁵ على ما فيه من المسائل، فأجبت أن أجعل له فهرستاً ليسهل الإطلاع على ما فيه. فأقول إن كتابي هذا مشتمل على مائة وخمسين حجاباً ومائة وخمسين كشفًا.

1 Qur'an 8:42.

2 MS: فوائد

3 MS: كفتم

4 MS: لتتميمه

5 MS: الإطلاع

Commentary

Māzandarānī commences *Kawāshif* with a brief preface. As it is customary, it begins by offering praises to God and salutations upon the Prophet and the Imams. This is followed by a brief remark concerning the book's purpose and structure. He notes that throughout his life, he has been eager to compose such a book to serve as a path to inquiry and reflection for him and others. He adds that due to various factors he has been prevented to undertake this task; these include his own frailties, lack of opportunity, prevalence of tribulations and trials, and the domination of the adherents of oppression and the subjugation of the adherents of knowledge. Nevertheless, realising that waiting for ideal circumstances is bound to be futile and that the passing of years brings more despair than hope for the future, he decided to write the book despite the difficulties involved. Māzandarānī informs the readers that in this endeavour he has chosen a middle path between writing a comprehensive or a compressed book. He has arranged the book into 150 sections each containing a veil (i.e. misgiving) and its corresponding removal (i.e. resolution), hence the title of his book: *Kawāshif al-ḥujub* ('Removing the Veils'). Māzandarānī mentions that considering his book is not arranged like other well-known books of jurisprudence, readers might feel disoriented; hence, he is providing a supplementary list of its contents, facilitating the book's navigation. The rest of the preface contains the title for each of the 150 sections of the book.

Passage One: On Whether or Not Becoming a Legal Expert Depends on Having Faith

One of the topics often discussed in the texts of jurisprudence concerns the requirements a person must fulfil in order to be considered a legal expert (*mujtahid*). Some of these requirements include fluency in Arabic, familiarity with the legal verses of the Qur'an and their interpretive traditions, and mastery of the hadith literature. Others pertain to beliefs and personal characteristics, such as religious affiliation (or lack thereof) and personal integrity. Various questions have been raised regarding the second set of requirements. Can, for instance, a Christian or an unbeliever, become an expert in Islamic law even though, according to Muslims, a Christian has but partial knowledge of theological truths and an unbeliever none? In the following section Māzandarānī addresses this issue by examining whether the discipline of jurisprudence is dependent on the discipline of theology. The passage begins with a line of arguments, posed to Māzandarānī by his hypothetical interlocutor, concerning why being a believer is a condition on being a legal expert.

فَهَلَّا إِذَا⁶ أَذْكَرَ الْكَوَاشِفَ لِيُعْلَمَ الْحَجْبُ بِالْمَقَابِصَةِ وَأَقُولَ...

[1.1] حجاب: ربما يُتوهم توقف الاجتهاد على علم الكلام معللاً بأن المجتهد يبحث عن كيفية التكليف، وهو متوقف على العلم بنفسه المتوقف على العلم بالمكلف المتوقف على العلم بحدوث العالم وافتقاره إلى صانع جامع للصفات الكمالية، مقدّس عن الصفات السلبية، باعث للأنبياء، مصدّق إياهم بالمعجزات، مخلف عليهم الأئمة المعصومين عن الخطأ والكذب في بيان الأحكام مما يُعرف اجتهداً من الأدلة المفصلة في الكلام.

[1.2] كشف: هذا الاعتقاد شرط الإيمان لعامة المكلفين لا للفقاهة والاجتهاد، ولذا قد يصير المجتهد مخالفاً وصوفاً كافراً والكافر المطلق مجتهداً مطلقاً ذا ملكة وقوة لاستنباط الفروع من أصولنا بأدلتنا التفصيلية بحيث لا يصح سلب اسم الفقاهة والاجتهاد عنه. نعم، الإيمان شرط لجواز الرجوع إليه لا بمعنى إحداث الفقاهة، وهذا واضح ويشهد به ما قالوه من أنه يُشترط في المفتي مضافاً إلى الاجتهاد الإيمان والعدالة. فلو كان الإيمان مأخوذاً في معناه لما [كان] معنى لما ذكروه، وأيضاً يوصفون الفقهاء بالاثني عشرية وهذا أيضاً من الشواهد على ما قلناه حذراً من التأكيد المخالف للأصل والقاعدة.

6 MS: فَهَلَّا إِذَا

[1.1] Veil: Māzandarānī's interlocutor remarks that jurisprudence depends on theology. He bases this statement on eight closely linked premises: (1) jurists investigate what one's legal responsibility is, and (2) knowledge of this depends on knowing the legal responsibility, (3) which depends on knowing the One who sets the legal responsibility, (4) which depends on knowing that the world came into being, (5) which depends on the fact that it needed some creator, (6) that this creator has all the attributes of perfection and is entirely free of negative attributes, (7) sends prophets, supporting them with miracles, and (8) appointing after them the Imams, who are protected from error and falsehood in explicating the law. Māzandarānī's interlocutor concludes that all these matters are known in jurisprudence as a result of the extensive proofs given in theology. According to this position, in order to become an expert in Islamic law, one must know that there is a God; knowledge of God's existence depends on knowing God's attributes, among which is that he is the creator of the world and through his providence sends inerrant prophets and imams to guide humans. Proofs for each of these propositions regarding God and his attributes are discussed in the discipline of theology. Hence, Māzandarānī's interlocutor concludes, becoming an expert in Islamic law is dependent upon first acquiring theological knowledge.

[1.2] Unveiling: Māzandarānī finds this argument unpersuasive. He responds that such theological beliefs are a condition on having faith for believers in general – not on being a jurist. Hence, he asserts, a person can become an expert in Islamic law even if he is a non-believer (*mukhālīf*) or an infidel Sufi. An infidel *par excellence*, Māzandarānī continues, could very well be a jurist *par excellence*, and fully capable of deriving particular rulings from the principles of Islamic law using its legal sources,¹³ such that it would be incorrect to deny legal expertise of him. In Māzandarānī's view, law is a discipline like any other. To become an expert in any discipline, one needs to master the requirements specific to it. In the case of Islamic law, one of the requirements is to acquire knowledge of Arabic, since the foundational sources of the law were revealed in that language. This knowledge, he remarks, can be obtained regardless of one's religious beliefs. After making this argument, Māzandarānī draws a distinction between whether a non-Muslim can become a legal expert and whether the same person can serve as a source of legal authority for Muslims. In the latter role, the legal expert is also required to be a Muslim of good character. That a jurist be also a believer, he notes, is a condition for seeking legal advice from him, but it is not a condition on his being a legal expert. In Māzandarānī's view, this position is corroborated by what is said about how, in order to be a jurist-consult (*muftī*), one must have not only legal expertise (*ijtihād*) but also faith (*imān*) and integrity (*ʿadāla*). That, however, would be senseless to say, were faith constitutive of the term's (i.e. *ijtihād*) meaning. Moreover, he takes the fact that jurists are qualified by their sectarian affiliations or juristic orientations, as another piece of evidence for his position, insofar as that qualification is meant to eschew emphasis that would contravene the rule. In Māzandarānī's view, the fact that legal experts identify themselves or other legal experts as "Twelver Shi'i" legal experts, for example, is another indication that the semantics of the word *mujtahid* does not require any specific religious affiliation.

[1.3] هذا، ولقد أصرّ أستاذنا الشريف -دامت شرافته- في توقف الاجتهاد على علم الكلام إصراراً غريباً، وعلّل ذلك بأن «الاجتهاد عبارة عن ملكة يقتدر بها على تحصيل الاعتقاد بالأحكام الإلهية، ومن العيان الغني عن البيان أن الفاقد للشرط المذكور غير واجد للملكة المذكورة إذ لا يُعقل أن يقال أن غير المعتقد بالله معتقد بأحكامه. أفطن أن تعتقد بكون الشخص الفلاني غلاماً لزيد مع اعتقادك بعدم وجود شخص زيد في الخارج قطّ؟ حاشا وكلاً». وفيه أنه لا ضير في أن يحصل لمن لا يعتقد بالإله ملكة تحصيل الاعتقاد بأحكام من هو إله باعتقاد الناس. وهذا واضح لا ستره فيه اللهم إلا أن يقال أن الإله عبارة عن مستحق للعبودية فيكون الاجتهاد عبارة عن الملكة التي يُقْتَدَرُ بها على تحصيل الاعتقاد بأحكام من هو مستحق للعبودية. ومن العيان أن الظاهر من هذا الكلام أن استحقاقه العبودية يكون عند المستنبط، فبناء عليه من لا يعتقد بالمستحق للعبودية ليس يجتهد لعدم صدق مفهومه [عليه]. وفيه أن الاشتراط على الفرض مسلم إلا أن تمنع كون الاجتهاد عبارة عما ذكر لما تقدم من عدم صحة سلب لفظه عن تحقق له الملكة المزبورة مع عدم اعتقاده بالمستحق للعبودية كما لا يخفى. [1.4] هذا، وربما يقال أن لزوم الأخذ بالحكم المستفاد من ظاهر اللفظ، إذ لا قرينة على الخلاف تنزيهاً للحكم عن القبيح ومقتضى نحو قاعدة اللطف ونفي التكليف بما لا يُطاق يُعرف من الكلام فيكون من الموقوف عليه.

[1.3] Māzandarānī is aware that besides his interlocutor, other prominent scholars have also made faith a requirement for becoming a legal expert. He cites his teacher, Sharīf al-ʿUlamāʾ, as an adherent of this position.¹⁴ He writes that his teacher has, strange to say, insisted that jurisprudence depends on theology. Sharīf al-ʿUlamāʾ had reportedly justified this position by arguing that, “Legal expertise is a matter of having developed a capability (*malaka*) by which one can acquire belief in the divine rulings. It is unreasonable to say that someone who does not believe in God can believe in his rulings. Could you believe that so-and-so is Zayd’s servant while you nonetheless believe that Zayd has no external existence whatsoever? Heavens no! Certainly not”. Māzandarānī disagrees with this view and explains his position in the following manner: it is no problem for someone who does not believe in a god to acquire the capability of believing in the rulings of what is, in the minds of others, a god. Māzandarānī then entertains a possible counter-argument against his position: it could be objected that a god is something that deserves to be worshipped, and therefore legal expertise would be the capability by which one can acquire belief in the rulings of that which deserves worship. He remarks that according to this view, a jurist must recognise that something deserves worship, and hence, someone who recognises nothing worthy of worship could not be a jurist, since the concept of jurist, so defined, would not apply to him. Māzandarānī responds to this objection by reiterating his earlier remark concerning the semantics of the word ‘legal expert’ (*mujtahid*). He grants the stipulated emendation, but objects to that being the meaning of legal expertise. Māzandarānī’s objection stems from his earlier argument about how it would be improper to deny the term “legal expertise” to anyone who had the relevant capability, even if this person did not believe that there was anything worthy of worship.

[1.4] As the exchange so far illustrates, for Māzandarānī, Islamic law is a scholarly discipline which can be studied by anyone who has acquired a set of skills essential to it; a person’s religious convictions or moral qualities have no bearing on his mastery of these legal skills. This he thinks, is even expressed in the *prima facie* sense of the word ‘legal expert’. Māzandarānī’s interlocutor, however, remains unconvinced and raises the following objection: “It is necessary to accept the *prima facie* sense of the term ‘legal expertise’, when there is nothing else to indicate otherwise, because it would be reprehensible for the Wise God to give a term a sense contrary to the obvious one without providing some indicator. Moreover, the ‘Principle of Divine Grace’ (*qāʿidat al-lutf*)¹⁵ and the principle that ‘God would not assign a duty greater than people’s capability’ are obtained from the discipline of theology; hence, ‘legal expertise’ (*ijtihād*) is dependent on the discipline of theology. Hence, it must have the obvious sense, and this is to be relied upon”.¹⁶ As we can see, Māzandarānī’s interlocutor disagrees with him regarding the *prima facie* sense of ‘legal expertise’. Whereas for Māzandarānī it indicates only a person who is expert in the law, for his interlocutor the term indicates a legal expert who also believes in God and is committed to certain theological doctrines, and these doctrines have consequences on one’s thinking about the law. The argument, hence, is that imbedded in the *prima facie* sense of the term ‘legal expert’ is a ‘believing’ legal expert. Māzandarānī is further told that to hold otherwise would undermine the doctrine of God’s grace, according to which God does not act contrary to people’s welfare. In this context, Māzandarānī’s interlocutor holds, if the phrase ‘legal expertise’ (*ijtihād*) had a meaning not expressed in its *prima facie* sense, it would have been incumbent on God to inform people of its precise meaning; otherwise they would not fully understand its meaning and hence would go astray. This argument assumes that the *prima facie* sense of ‘legal expertise’ clearly includes in its semantics the expert’s belief in God and that Māzandarānī’s argument that it

[1.5] وفيه أن نحو هذه القواعد مستفادة من الكليات التي ذكرها الأصوليون في كتبهم الأصولية، ففيها الغنية والكفاية. ومن هنا ينقدح أنه لو قلنا بمقالة الأولين لا نقول بلائية الرجوع إلى ما دونوه في علم الكلام وصرف العمر في انفعالهم ما ذكروه من الأدلة وردّ شبهاتهم السوفسطائية بل القدر الضروري إنما هو التعرف وتصحيح الاعتقاد المأمور به عامة المكلفين لا على وجه مخصوص بل على أي نحو كان - كيف وإن المراجعة إلى الكتب الكلامية كما هو واضح ليس إلا من باب المقدمة لتحصيل الاعتقاد، وعلى تقدير حصوله ولو من قول المعلم أو الأبوين لما [كان] معنى للأمر بالمراجعة إليها إذ لا معنى للأمر بالمقدمة بعد حصول ذيلها.

[1.6] هذا مضافاً إلى أن المأمور به لو كان هو تحصيل الاعتقاد على النحو الخاص والمنهج المخصوص للزم أن يكون أكثر الناس من العوام، بل غير المحدود من الحكماء والمتكلمين، مقصّرين في تحصيل الاعتقاد المأمور به على الوجه الذي أمر به، ولازم ذلك الحكم بكفر الجميع ومنه يلزم مفساد عظيمة لا يخرج عن عهدتها الأوحدي من المتدينين فضلاً عن العامة.

[1.7] هذا كله مع الإغماض عن أن التكليف بتحصيل الاعتقاد على النحو المخصوص يكون بالنسبة إلى العامة ملزوماً للتكليف بما فوق الطاقة. نعم، لو فرض عدم حصول الاعتقاد المأمور به إلا بالمراجعة إلى الكتب الكلامية وانحصار المقدمة فيها فلا محيص من القول بلائيتها، ولكنه مجرد الفرض. فإياك وإياك وصرف المهمة في شطر من الزمان فضلاً عن طول العمر في انفعالهم ما ذكروه من المقالات وردّ ما أوردوه من الشبهات. فإنك إن لم يحصل لك الزلة - على فرض المحال حيث إن من هؤلاء قلّ من لم يحصل له الزلة بل الزلات - فما حصلت إلا الفضيلة، وإلا فما حصلت في الدنيا والآخرة إلا الحسرة والندامة. فإن الخطأ في العقائد هالك بلا شبهة كما عن قاطبة الخاصة وجمهور العامة.

[2.1] حجاب: ربما يتوهم أن ظواهر الكتاب لا حجية فيها.

does not go against this *prima facie* sense. Had Māzandarānī been correct, it is concluded, it would be incumbent on God to make departure from the *prima facie* sense of the phrase clear to people; the fact that he has not establishes that Māzandarānī's departure from the *prima facie* sense of the phrase 'legal expertise' is unjustified.

[1.5] To the above argument Māzandarānī provides the following response. Were we even to grant the view that the word *mujtahid* includes in its semantics the meaning of a 'believing' legal expert, we would not be committed to holding that one must study what has been written in the discipline of theology and spend one's entire life trying to understand the proofs and refutations of sophistical misgivings. Instead, the required degree of acquaintance with theology would merely be that needed to acquire correct beliefs about those matters that believers in general have been commanded to acquire – and not in any particular way either; the beliefs can be acquired in any way. Hence, according to Māzandarānī, even if one were to concede, for the sake of argument, that legal expertise does require a minimum theological knowledge, it would not necessarily mean that such knowledge must be attained by reading the books of theology. Rather, such knowledge could be gained by a variety of means besides theological inquiry. The critical matter, Māzandarānī remarks, is to have correct beliefs and not that the beliefs be specifically acquired through the discipline of theology. In his view, reading books on theology is merely a preliminary to acquiring correct beliefs; if those beliefs have already been acquired, whether from a teacher or parents, there would be no point to command a person to read those books and to undertake a preliminary study yet again.

[1.6] Moreover, Māzandarānī continues, were it the case that correct beliefs were commanded to be acquired in a specific way, it would follow that most people – lay persons and countless numbers of philosophers and theologians – would all be negligent in acquiring the commanded beliefs in the specified way, and so they would have to be deemed infidels. He cautions that other false consequences would result as well from which not even pious individuals would be exempt, let alone common believers. This is all to ignore the fact that requiring common believers to acquire their beliefs in this specific way would be to assign them a duty greater than their capability. This last remark is connected with the view expressed in the Qur'an according to which God does not place responsibilities on anyone that would exceed their ability to fulfil them.

[1.7] Māzandarānī ends his exposition with a general warning, worded polemically, against spending one's life in theological pursuits. He states, were we to suppose that one could acquire the commanded beliefs only by reading books of theology, then there would be no escape from agreeing that it is required. However, this is a mere supposition. So beware! Beware spending any time at all on understanding the doctrines theologians have elaborated or on the refutations of misgivings they have adumbrated, let alone spending your whole life on it. If – assuming the impossible – you did not go astray – and few indeed are those theologians who do not – the only thing you would get from theology would be worldly honour. Otherwise, nothing results from it in this world or the next besides regret: those who have incorrect beliefs will, without a doubt, perish in the hereafter, as all Shi'is and many Sunnis have agreed.

Passage Two: On the *Prima Facie* Sense of the Qur'an

[2.1] Veil: Māzandarānī's interlocutor remarks that the *prima facie* sense of the Qur'an is non-probative.

[2.2] كشف: ما ذكر إن كان من باب فقد الموضوع بمعنى أن الكتاب جميع ما فيه من المتشابهات، ففيه أنه إنكار باللسان ومكابرة مع الوجدان. وليت شعري أنه كيف يمكن أن يُعقل الفرق بين الكتاب والسنة بالقول بأن الألفاظ المخصوصة إذا كانت واردة في الكتاب يكون من قبيل المتشابه وفي السنة من الحكم، والحال أن الفرق تحكّم، والكتاب ناطق بأن منه الحكم فضلاً عن المتشابه، فتأمل.

[2.3] وإن كان من باب إنكار الحكم بمعنى أن ظواهر الكتاب غير حجة وإن لم يكن ظواهر غيره كذلك، ففيه أنه مدفوع بالإجماع. فإن قلت إن علمائنا الأخباريين قد نازعوا فيه ولا معنى لدعوى الإجماع في موضع النزاع، قلت -مضافاً إلى أن الإجماع عبارة عن الاتفاق الكاشف وهو قد يحصل من الاثنين وإن خلا من المائة، وأنه لا عبرة بخلاف الأخبارية كما لا عبرة بوافقهم-: إن الدليل لا ينحصر فيه بل هناك أمور ظنية يحصل من تراكمها القطع بالحجية:

[2.4.1] الأول: الإجماع المنقول على لسان غير واحد من الأصحاب فإن الفاضل التوحي مع كونه من الأخبارية قال في الوافية: «الأول: الكتاب ووجوب اتباعه والعمل به متواتر ومُجمَع عليه».⁷ وفي شرح هذا الكلام للسيد المحقق الكاظمي: «وهذا اعتراف منه بدلالة الأخبار المتواترة وانعقاد الإجماع على جواز الأخذ بكتاب الله -جل اسمه- حسب ما حررنا في هذا الفصل⁸ وفي موضع آخر منه»⁹. وبالجملة فجواز الأخذ بكتاب الله أو بظواهره مما لا ينبغي أن يُقدم على إنكاره ذو مسكة.

[2.4.2] الثاني: الشهرة العظيمة البالغة إلى حد لا يبعد معها دعوى شذوذ المخالف في المسألة.

7 الوافية في أصول الفقه، ص 147

8 MS: الفضل

9 This commentary remains unpublished.

[2.2] Unveiling: Māzandarānī begins his response by stating, if what is meant by the above assertion is that the Qur'an has no *prima facie* sense and the entirety of it is ambiguous (*mutashābih*), then the following objections apply. He first comments that this view is so obviously false that holding it could be nothing more than a denial in word, a mere stubborn insistence despite the realisation that it is indeed false. He next argues that were this position correct, how could one make any sense of drawing a distinction between the Qur'an on the one hand and the verbal *sunna* on the other.¹⁷ He asks rhetorically, the same specific words occurring in the Qur'an would be ambiguous, yet when they appeared in the *sunna*, they would become clear (*muḥkam*)!? In his view, any such distinction would be arbitrary. Furthermore, Māzandarānī argues, the Qur'an itself mentions that it contains "clear" verses in addition to "ambiguous" ones.¹⁸

[2.3] After providing the above arguments, Māzandarānī presents and then refutes another interpretation of his interlocutor's statement. He writes that if, on the other hand, what is meant by the above statement is that the *prima facie* sense of the Qur'an is indeed not probative, even though the *prima facie* sense of other texts (e.g., hadith) may be so, then the following objections apply. His first argument relies on consensus. According to Māzandarānī, there is a consensus among scholars that his interlocutor's position – 'the *prima facie* sense of the Qur'an is non-probative' – is false. He preempts a possible rejoinder to his claim for consensus on this matter: "But our Akhbārī scholars deny that their position is false; hence, it is nonsense to claim that there is consensus on a matter on which there are disagreeing views".¹⁹ To this objection Māzandarānī replies that consensus, first of all, simply means an agreement that reveals the correct position regarding a given issue,²⁰ and this could occur with only two people party to the agreement, though a hundred others disagree. Moreover, he holds, the fact that Akhbārīs disagree is of no consequence, just as it would be of no consequence were they to agree. Furthermore, there are other proofs besides consensus, which, though each on its own yields only conjecture (*ẓann*), when taken in aggregate yield certainty (*qat'*). Hence, Māzandarānī maintains, regardless of whether or not his interlocutor agrees with his take on consensus in general and his views on Akhbārīs in particular, his interlocutor's position is false since there are ten other arguments besides consensus that affirm the probative force of the *prima facie* sense of the Qur'an. He proceeds to outline each.

[2.4.1] First. The consensus reported from more than one scholar of prior generations: despite his prior dismissive remark concerning some Akhbārī scholars' divergence from his claimed consensus on this topic, Māzandarānī finds it difficult to let go of his argument from consensus. He reiterates it again here, this time accompanying it with evidence that, contrary to his interlocutor's assertion, even prominent Akhbārī scholars did not advocate rejecting the *prima facie* sense of the Qur'an. He points to al-Fāḍil al-Tūnī as an example and writes that although al-Tūnī was an Akhbārī,²¹ he wrote the following in his book *al-Wāfiya*: "The Qur'an itself, and the fact that it is obligatory to follow it and act on it, is *mutawātir*²² and is also a matter of consensus".²³ Māzandarānī further remarks that al-Sayyid al-Muḥaqqiq al-Kāzimī in his commentary on *al-Wāfiya*, has taken the above sentence as a concession by al-Tūnī that *mutawātir* reports and consensus both indicate it is permissible to use the Qur'an to derive law.²⁴ In sum, Māzandarānī concludes, it is permissible to use the Qur'an – in its *prima facie* sense – to derive law, which he believes, no one in their right mind would even consider denying.

[2.4.2] Second. The overwhelming popularity of this opinion: he claims that the position he advocates is prevalent among scholars to such an extent that it is plausible to say that someone who opposes it is a rarity.

[2.4.3] الثالث: احتجاج أصحاب الأئمة وغيرهم من العلماء من لدن البعثة إلى زماننا هذا فلو لم تكن الحجية المزبورة من الأمور المقررة المعلومة لديهم لما أمسكوا عن النكير لأن العادة قاضية بذلك في مقام التشاجر والتنازع، لكن اللازم باطل فكذلك الملزوم.

[2.4.4] الرابع: التقرير فإنهم عليهم السلام مع اطلاعهم على الاحتجاج لم يمنعوه، ومن البين أن تقريرهم عليهم السلام كفعلهم وقولهم حجة.

[2.4.5] الخامس: الأخبار الآمرة فيها بالعرض على الكتاب فإن الكتاب لو لم يك من أقوى الأدلة لما [كان] معنى للأمر بعرض الدليل عليه.

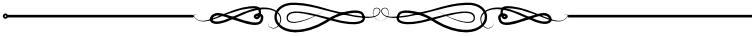
[2.4.6] السادس: الأمر بالتدبر والذم في تركه لأن التدبر فيما لا طائل فيه ولا يفهم فيه المعنى غير وجيه جداً.

[2.4.7] السابع: الأولوية فإن حجية ظواهر السنة يستلزم حجية ظواهر الكتاب بالطريق الأولى.

[2.4.8] الثامن: قصة ابن الزبير المشهورة حيث قال صلى الله عليه وآله «ما أجهلك بلسان قومك، أما تعلم أن 'ما' لما لم يعقل؟»¹⁰

[2.4.9] التاسع: التقرير بتقرير آخر هو أن أصحاب الأئمة عليهم السلام كثيراً ما يعترضون عليهم بالقول بأن الحكم الفلاني مخالف لظاهر الكتاب ولم ير من أحدهم القدح فيه بأنكم لا تفهمون الكتاب أو أنه ليس بحجة عليكم بل يجيبون على وجه يظهر منه الوجه للمخالفة. وهذا تقرير منهم عليهم السلام. وقد مر أن تقريرهم كفعلهم وقولهم حجة.

[2.4.10] العاشر: النبوي المشهور: «إني تارك فيكم الثقلين ما إن تمسكتم بهما لن تضلوا أبداً: كتاب الله وعترتي»¹¹. فإن الظاهر استقلال كل من الأمرين في مرحلة الاعتبار والحجية كما لا يخفى.



[2.4.3] Third. The fact that the Imams' companions and other scholars besides – from the time of the Prophet until today – have adduced the Qur'an's *prima facie* sense as evidence: according to Māzandarānī, were the Qur'an's *prima facie* sense instead non-probative and not a well-established matter among the Imams' companions and other scholars, they would have objected to its use as supporting evidence for a given position. He adds that such is the prevailing practice in cases of disputation and debate. But since the consequent – namely, that they objected to using the *prima facie* sense of the Qur'an as proof – is false, so too must be the antecedent – namely, that they denied that the Qur'an's *prima facie* sense could be used as proof.

[2.4.4] Fourth. The Imams' tacit approval: according to Māzandarānī, although the Imams were aware that the Qur'an's *prima facie* sense was being used as evidence, they did not try to stop it. He adds that it has been well-established that the Imams' tacit approval is just as probative as their deed or word.

[2.4.5] Fifth. Those hadith (*akhbār*) commanding that every hadith be compared with the Qur'an:²⁵ he argues that were the *prima facie* sense of the Qur'an not one of the strongest forms of proof, there would be no meaning to commanding that hadith be measured against it in order to establish their veracity.

[2.4.6] Sixth. The command to contemplate and the censure for failing to do so as found in the Qur'an and hadith:²⁶ he notes that to command someone to contemplate the Qur'an when it is futile, and the meaning cannot be understood, would be preposterous indeed.

[2.4.7] Seventh. An *a fortiori* argument: granting that the *prima facie* sense of the *sunna* is probative, Māzandarānī holds, *a fortiori* so too must be the *prima facie* sense of the Qur'an.

[2.4.8] Eighth. The story featuring Ibn Zibā'ra:²⁷ Ibn Zibā'ra was a renowned poet belonging to the Prophet's tribe, the Quraysh. According to some accounts, he was at first a fierce opponent of the Prophet but later became a Muslim. It is reported that in one incident, when Ibn Zibā'ra misunderstood a verse of the Qur'an, the Prophet said to him, "How ignorant you are of your tribe's language. Don't you know that ...". In this passage, Māzandarānī invokes Ibn Zibā'ra to indicate that mastery of the language has a direct relation to understanding the Qur'an and its *prima facie* sense; had it been otherwise, the Prophet would not find Ibn Zibā'ra's failure to understand the Qur'an despite his renowned literary abilities something worth pointing out.

[2.4.9] Ninth. Another tacit approval: Māzandarānī points out that the Imams' companions would often object to their pronouncement on some matter, saying that it contradicts the *prima facie* sense of the Qur'an, and yet none of the Imams saw it fit to criticise this on the grounds that "you do not understand the Qur'an" or that "the Qur'an is not to be taken by you as proof". Instead, they would answer the objections in such a way as to explain the apparent contradiction. He concludes, this is a form of tacit approval, and – as already noted – the Imams' tacit approval is as probative as their deed or word.

[2.4.10] Tenth. The famous hadith of *al-thaqalayn*: Māzandarānī bases his last argument on a well-known hadith attributed to the Prophet: "I leave among you the two weighty things (*al-thaqalayn*), and if you cling to them, you will never go astray: the book of God and my progeny".²⁸ According to both Shi'i and Sunni sources, the Prophet addressed these words to the believers during the sermon he delivered on his last pilgrimage to Mecca. Māzandarānī uses this hadith to argue that the *prima facie* sense of the hadith is that each of the two weighty matters, namely the Qur'an and his progeny, is independent of the other in terms of serving as proof. In Māzandarānī's view, had the *prima facie* sense of the Qur'an lacked probative force, the Prophet would not include it as one of the two means of guidance.

Māzandarānī believes that the arguments he has outlined, taken as a whole, establish with certainty that the Qur'an contains clear and ambiguous passages and that the *prima facie* sense of the clear passages can be understood and, hence, is probative.

Endnotes

- 1 Mahdawī, *Bayān al-mafākhir* (Isfahan, 1368Sh/1989), v. 2, p. 185. For a brief overview of Qajar Iran see Ettehadiéh Nezam-Mafi, "Qajar Iran (1795–1921)," in *The Oxford Handbook of Iranian History* (Oxford, 2012), pp. 319–345; for a more detailed examination see Amanat, *Iran: A Modern History* (New Haven, 2017), pp. 177–385; for Qajar religious history see Gleave (ed.), *Religion and society in Qajar Iran* (Oxford, 2005). It is to be noted that as of now only a limited number of studies on the Qajar period are available in English.
- 2 Mahdawī, *A'lām-e Isfahān* (Isfahan, 1386Sh/2007), v. 3, p. 500.
- 3 Muḥammad Sharīf al-Māzandarānī, known as Sharīf al-'Ulamā', was a prominent teacher in Karbala; he left no writings behind. On him see al-'Āmilī, *A'yān al-shī'a* (Beirut, 1403/1983), v. 9, p. 364.
- 4 Āghā Buzurg al-Ṭihirānī, *al-Dharī'a ilā taṣānīf al-shī'a* (Beirut, 1403/1983), v. 2, p. 205; v. 18, p. 177. It is to be noted that *Kawāshif* is also not a particularly well-organised treatise.
- 5 Mahdawī, *A'lām-e Isfahān*, v. 3, p. 501.
- 6 See Ma'ālīm's Table of Contents in al-'Āmilī, *Ma'ālīm al-uṣūl* (Qum, 1374Sh/1995), pp. 353–354.
- 7 For an overview of various historical developments in Shi'i legal thought, including the Uṣūlī school of Twelver jurisprudence, see Gleave, "Imami Shi'i Legal Theory: From its Origins to the Early-Twentieth Century," in *The Oxford Handbook of Islamic Law* (Oxford: Oxford University Press, 2018).
- 8 On the Akhbārī movement see Gleave, "Akhbāriyya and Uṣūliyya," in *EI3*; Gleave, *Scripturalist Islam* (Leiden, 2007); Gleave, *Inevitable Doubt: Two Theories of Shi'i Jurisprudence* (Leiden, 2000); Stewart, *Islamic Legal Orthodoxy: Twelver Shiite Responses to the Sunni Legal System* (Salt Lake City, 1998), pp. 175–208; Stewart, "The Genesis of the Akhbārī Revival," in *Safavid Iran and Her Neighbors* (Salt Lake City, 2003), pp. 169–193 (see note 2 for a list of studies on the Akhbārīs); Kohlberg, "Aspects of Akhbārī Thought in the Seventeenth and Eighteenth Centuries," in *In Praise of the Few: Studied in Shi'i Thought and History* (Leiden, 2020), pp. 522–546.
- 9 On al-Bihbahānī see Gleave, "Muḥammad Bāqir al-Bihbihānī (d. 1205/1791)," in *Islamic Legal Thought: A Compendium of Muslim Jurists* (Leiden, 2013), pp. 415–432. For a study of his legal thought see Gleave, *Inevitable Doubt: Two Theories of Shi'i Jurisprudence* (Leiden, 2000).
- 10 According to some reports, copies of some of Māzandarānī's books like *Uṣūl al-fiqh* were circulating among several leading scholars, including Sayyid Muḥammad Kāzīm Ṭabāṭabā'i Yazdī (d. 1337/1919). See Āghā Buzurg al-Ṭihirānī, *al-Dharī'a*, v. 2, p. 205.
- 11 For a brief outline of Anṣārī's life and thought see Hairī, "Anṣārī," *EI2*.
- 12 The section on the *prima facie* sense of the Qur'an and the semantic discussions concerning the term '*mujtahid*' in the previous section on whether a non-Muslim can become an expert in Islamic law are related. Hence, we have placed the latter before the former in the chapter, although they are reversed in the Arabic.
- 13 The four sources of the law are the Qur'an, the *sunna*, consensus, and reason.
- 14 Sharīf al-'Ulamā', though an active teacher, was not a prolific author; reportedly he only authored one treatise. His view on the topic examined here, beside Māzandarānī's presentation, can also be consulted in the extant lecture notes of his students. See, for example, Sayyid Ibrāhīm al-Qazwīnī, *Ḍawābiṭ al-uṣūl*, p. 453.
- 15 Other renditions of *lutf* include "divine assistance" and "divine favour". On this principle see Shihadeh, "Favour, Divine (*Lutf*)," in *EI3*. For a Shi'i treatment of this principle see al-'Allāma al-Ḥillī's brief exposition as translated in Watt, *Islamic Creeds: A Selection* (Edinburgh, 1994), pp. 101–102.
- 16 A reference to the verse, "God does not charge a soul with more than it can bear" (Qur'an 2:286).
- 17 *Sunna* refers to the prophetic tradition as preserved in the hadith literature.
- 18 Māzandarānī is referring here to a well-known verse from the Qur'an: "There is no God but Him, the Mighty, the Wise. It is He who has sent down to you [Prophet] the Book. Some of its verses are clear in meaning [*muḥkam*]-these are the cornerstone of the Book-and others are ambiguous [*mutashābih*]"

- (Qur'an 3:7, trans. by Abdel Haleem with minor revisions).
- 19 For al-Astarābādī's view on the probative force of the Qur'an's *prima facie* sense see, for example, al-Astarābādī, *al-Fawā'id al-madaniyya* (Qum, 1426), pp. 178–179. Gleave has translated and contextualised this passage from *al-Fawā'id* in his *Scripturalist Islam*, pp. 72–74. Also see al-Astarābādī, *al-Fawā'id al-madaniyya*, pp. 269–271. For a study of the disagreements between Akhbārīs and Uṣūlīs on various issues including on the probative force of the Qur'an's *prima facie* sense see Newman, "The Nature of the Akhbārī/Uṣūlī Dispute in Late-Safawid Iran. Part One: 'Abdallāh al-Samāhijī's 'Munyat al-Mumārīsin'," and "Part 2: The Conflict Reassessed," *BSOAS* 15 (1992), pp. 22–51, 250–261.
 - 20 Unlike their Sunni counterparts, Twelver scholars do not regard consensus (*ijmā'*) as the agreement of all or most experts on some matter guaranteeing the correctness of their view on it. Rather, they regard consensus as the agreement on some matter between any number of people – at least one of whom is unknown – indicating that the hidden Imam also agrees, which would guarantee the correctness of the position, since the Imam is considered inerrant in his views. For brief studies on the Shi'i conception of consensus see Stewart, "Ejmā'," *EIR*; Pakatchi, "Ejmā'," *Dā'irat al-ma'āref-e bozorg-e eslāmī* (Tehran, 1374Sh/1995), v. 6, pp. 615–632. For discussions of consensus in Sunni thought see Zysow, *The Economy of Certainty* (Atlanta, 2013), pp. 113–158; Weiss, *The Search for God's Law* (Salt Lake City, 1992), pp. 181–258; Hallaq, "On the Authoritativeness of Sunnī Consensus," *IJMES* 18/4 (1996), pp. 427–454; Stewart, "Consensus, Authority, and the Interpretive Community in the Thought of Muḥammad b. Jarīr al-Ṭabarī," *JQS* 18/2 (2016), pp. 130–179 (esp. pp. 133–141).
 - 21 al-Fāḍil al-Tūnī (d. 1071/1660) was an active figure in Safavid intellectual scene. As Gleave has pointed out, his stance on the Akhbārī-Uṣūlī disputes is nuanced and both sides have claimed him as their own. See Gleave, *Scripturalist Islam*, pp. 238–239, 262–263.
 - 22 A report or text is considered *mutawātir* when the recipient attains certainty that it was faithfully transmitted by first-hand independent narrators in such a number and in each successive generation that it would be inconceivable for them all to have colluded in forging it. According to most Muslim theologians and jurists, *mutawātir* reports engender necessary knowledge in their recipients.
 - 23 al-Fāḍil al-Tūnī, *al-Wāfiya fī uṣūl al-fiqh* (Qum, 1424/1992), p. 147. For al-Tūnī's discussion of the *prima facie* sense of the Qur'an see his *al-Wāfiya*, pp. 136–140, 257–260.
 - 24 *al-Wāfi fī sharḥ al-Wāfiya*, al-Sayyid Muḥsin al-A'rajī al-Kāzimi's (d. 1227/1812) commentary on al-Tūnī's *al-Wāfiya* remains in manuscript (for further details see Chapter 2 of this volume).
 - 25 In one version of this hadith, the Prophet is reported to have stated that if a saying of his reaches his followers, they should compare it to the Qur'an. If the saying agrees with it, they should accept it; if it disagrees with it, they should put it aside. See, for example, al-Kulaynī, *al-Kāfi* (Qom, 1429), v. 1, pp. 171–174.
 - 26 Māzandarānī is likely alluding to the following verse: "Will they not contemplate the Qur'an? Do they have locks on their hearts?" (Qur'an 47:24, trans. by Abdel Haleem).
 - 27 For a study of Ibn Zibā'ra's life, poetry, and relationship to the Prophet see Coster, *The Good, the Bad, and the Ugly: Allegiance and Authority in the Poetical Discourse of Muḥammad's Lifetime* (PhD diss., Groningen, 2019), pp. 176–262. This reported interaction between Ibn Zibā'ra and the Prophet, and its possible implications in legal hermeneutics, appears in several major texts of the classical period. See, for instance, al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām* (Riyad, 1424/2003), v. 3, pp. 46–48.
 - 28 On this statement, known as *ḥadīth al-thaqalayn*, and its various versions see Bar-Asher, *Scripture and Exegesis in Early Imāmī Shiism* (Leiden, 1999), pp. 93–98.

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CHAPTER 4

What Makes a Hadith Transmitter Reliable? A Discussion from the *Ghāyat al-ma'mūl* of al-Kāẓimī (d. 1065/1655)

Raha Rafii and Belal Abu-Alabbas

Introduction*

The author of this text, Jawād b. Sa'd b. Jawād al-Baghdādī al-Kāẓimī (hereon Kāẓimī), was born in the last decades of the tenth/sixteenth century in the shrine city of al-Kāẓimiyya north of Baghdad.¹ He is popularly known as “al-Fāḍil al-Jawād” (the virtuous Jawād). The exact date of his birth remains unknown. Born into a scholarly family, he received early religious training from his father. For further studies, he travelled to the Safavid capital at the time, Isfahan, where he studied under the tutelage of al-Shaykh al-Bahā'ī (d. 1030/1620 or 1031/1621).² The biographers introduce Kāẓimī as one of al-Shaykh al-Bahā'ī's most distinguished students.

Kāẓimī was more than a seminarian: he was given administrative responsibilities. He assumed the post of *Shaykh al-islām*³ of Astarābād (present-day Gorgan) during the reign of Shāh 'Abbās I (d. 1038/1629). It appears likely that he was promoted to this prestigious post due to his close ties with al-Shaykh al-Bahā'ī who himself held the office of *Shaykh al-islām* of Isfahan and other provinces for much of period between 1580 and his death in 1620–21.⁴ Kāẓimī, however, did not stay long in Astarābād; he found himself embroiled in a dispute on account of which he was expelled from the town. This expulsion is believed to have been instigated by a local rival scholar and fellow student of al-Shaykh al-Bahā'ī, al-Sayyid Amīr Muḥammad Bāqir al-Astarābādī (d. after 1031/1621, popularly known as Mīr Muḥammad Bāqir Ṭālibān). Kāẓimī reported this incident to Shāh 'Abbās I who not only dismissed his plea but also expelled him from the region. The Shāh, it is reported, had a close relationship with Ṭālibān.

Kāẓimī returned to his hometown where he continued teaching and writing. He completed writing a commentary in 1029/1619 in al-Kāẓimiyya from which we can deduce that he probably left Safavid Iran around 1025/1615. The Safavid official of Baghdad Bektāsh Khān Gorjī (d. 1049/1639) was impressed by Kāẓimī's scholarship and maintained a good relationship with him. Kāẓimī resided in his hometown for more than two decades. The political turmoil of Baghdad at the time, combined with his close relationship with Bektāsh Khān, contributed to his decision to return to Safavid Iran just before Sulṭān Murād IV (r. 1032-49/1623-40) recaptured Baghdad for the Ottomans in 1638. Unlike his first visit when he lived in the northern provinces, this time he chose to live in the south. He resided in Ḥuwayza (also spelled Ḥawīza or Hoveyzeh; in the Khuzestan province of present-day Iran) for some time and then moved to Tustar (Shūshtar – Shoostar in European sources). In 1050/1640 he assumed the post of *Shaykh al-islām* of Shūshtar following the death of Shaykh al-Islām 'Abd al-Laṭīf al-Jāmi'ī (d. 1050/1640-41). There is no further information on how long his tenure as *Shaykh al-islām* of Shūshtar lasted nor do we know

* The introduction of this chapter is written by Kumail Rajani.

about his other whereabouts. The precise place of his death also remains unknown. Some biographers record that Kāzimi died in Isfahan, whilst others suggest that he died in al-Kāzimiyya. Notwithstanding this ambiguity, the sources agree that he was buried in al-Kāzimiyya which implies that, if he died in Isfahan, his remains would have been taken there. Similarly, his precise date of death is uncertain; it is estimated, though, that he died in 1065/1655.⁵

Al-Shaykh al-Bahā'ī is reportedly Kāzimi's only teacher during his stay in Safavid Iran. Nor are there many prominent figures among his very few students recorded in the biographical dictionaries. Among the students were: al-Sayyid Mir Maḥmūd b. Faṭḥallāh al-Ḥusaynī al-Kāzimi al-Najafī, al-Shaykh Shāhīn, Muḥammad al-Kāshānī al-Āmili, his nephew 'Alī b. Muḥammad al-Hādī b. Sa'dallāh and few others.

Kāzimi's major literary output primarily comprised of commentaries. The twentieth century Twelver bibliophile Shihāb al-Dīn al-Mar'ashī al-Najafī (d. 1990) has credited him with 19 works: 12 *sharḥs* (commentaries), 4 *ta'liqas* (glosses), a *tawḍīḥ* (annotation), a monograph and a treatise.⁶ Most of these commentaries (9 in total) are on the books of his teacher, al-Shaykh al-Bahā'ī, in diverse disciplines, including Arabic grammar (e.g. his *Sharḥ Risālat al-ṣamadiyya fī l-naḥw*), astronomy (his *Sharḥ Tashrīḥ al-aflāk*)⁷, arithmetic (his *Sharḥ Khulāṣat al-ḥisāb*), geography (his *Sharḥ Risālat fī nisbat taḍārīs al-arḍ*), riddles and puzzles (his *Sharḥ ba'd al-mu'ammayāt wa-l-alghāz*) and occult sciences (his *Sharḥ Kitāb surkhāb fī 'ilm al-raml*). He composed numerous commentaries on classical works of Twelver law including an incomplete commentary on al-Shahīd al-Awwal's (d. 786/1384) *al-Durūs* (titled *Sharḥ al-Durūs al-shar'īyya fī fiqh al-imāmiyya*), a commentary on al-'Allāma al-Ḥillī's (d. 726/1325) *Nahj al-mustarshidīn* (titled *Aḥwāl al-dīn fī sharḥ Nahj al-mustrashidīn fī uṣūl al-dīn*, completed in 1029/1619 in al-Kāzimiyya) and al-'Allāma's *Khulāṣat al-rijāl* (titled *Ta'liqa 'alā Khulāṣat al-rijāl*) and a commentary on al-Muḥaqqiq al-Karākī's (d. 940/1534) *al-Ja'fariyya* (titled *al-Fawā'id al-'aliyya fī sharḥ al-Ja'fariyya*; completed on 2 Rabi' II 1032/3 February 1623 in al-Kāzimiyya). He also transcribed *al-Dharī'a ilā uṣūl al-sharī'a* of al-Sharīf al-Murtaḍā (d. 436/1044) on Wednesday 8 Ramaḍān 1025/21 September 1616 which is arguably the best surviving MS of this *uṣūl* work. This MS is housed at Majlis-e Shūrā-ye Islāmī Library in Tehran (#3794).⁸ His only monograph and arguably his most important work is an exegesis of the legal verses of the Qur'an titled *Masālik al-afḥām ilā āyāt al-aḥkām* (completed on 3 Muḥarram 1043/10 July 1633).⁹

The text presented in this chapter is yet another commentary on his teacher's popular *uṣūl* work, *Zubdat al-uṣūl*. In his study of al-Māzandarānī's commentary on the *Zubda*, Gleave (see Chapter 1 of the current volume) outlines the nature and style of postclassical Twelver works of *uṣūl*, particularly that of the *Zubda*. Besides al-Shaykh al-Bahā'ī's own marginal notes that he appended after completing his book, *Zubda* has attracted 28 commentaries (*shurūḥ*), 8 glosses (*ḥawāshī*) and 3 poetic re-presentations (*manẓūmāt*).¹⁰ It is on the request of his teacher and while he was alive, it is reported, that Kāzimi wrote his commentary on the *Zubda* titled *Ghāyat al-ma'mūl fī sharḥ Zubdat al-uṣūl*.¹¹ Based on this account, it is more likely that the *Ghāyat al-ma'mūl* should have been composed in Dhū l-Ḥijja 1027/November-December 1618 and not Rabi' II 1042/October-November 1632.

Unlike al-Māzandarānī's commentary (described in Chapter 1), Kāzimi's commentary is not blended (*mazjī*), rather he picks passages from the *Zubda* and comments upon them phrase by phrase. He elucidates the obscure passages of the base text, elaborates its arguments and compares and contrasts the opinions of his teachers with his predecessors (al-Shaykh al-Ṭūsī d. 460/1067, al-Muḥaqqiq al-Ḥillī d. 676/1277, and al-'Allāma al-Ḥillī d. 726/1325). In the pro-

cess, he does not shy away from criticising his teacher's views. On one occasion, for instance, he writes, "it is evident from the evidence presented earlier that the author's [i.e. al-Shaykh al-Bahā'ī's] opinion is far from being correct" (*wa-l ḥaqq inna qawl al-muṣannif hunā ba'id ba'd mulāḥaẓat mā aslafnāhu*). In another instance, Kāzimī states, "the opinion of the teacher, the author, that it is *a fortiori* argument is doubtful" (*wa-qawl al-ustādh al-muṣannif annahu qiyās al-awlawiyya ḡayr ṣāḥir*). This critical approach, adopted by Kāzimī, has put his commentary on a par with his teacher's base text (*al-sharḥ ka-l-aṣl mashhūrān*).¹²

The edition of the selected passages and its English commentary presented in this chapter is the result of three teams of researchers: Raha Rafii and Dale Correa produced the first draft from a manuscript housed at Houghton Library of Harvard University (*Kitāb Ghāyat al-ma'mūl fī sharḥ Zubdat al-uṣūl* MS #1651, MS Arab 231, 112v-116v – indicated as H); Robert Gleave and I then consulted two other manuscripts from Majlis-e Shūrā-ye Islāmī Library (#14062 [pp. 186–192] and #8081 [fols. 75r-78v] – indicated as M1 and M2 respectively) and collated with H after recording their variants in the footnotes. We found that M1 contains several marginal notes from other commentaries of the *Zubda* – the most notable was that of another student of al-Shaykh al-Bahā'ī, Muḥammad b. Maḥmūd b. 'Alī al-Ṭabasī (d. after 1083/1672); Raha Rafii and Belal Abu-Alabbas then composed the English commentary and revised the Arabic draft of the text.

The popularity of the *Ghāyat al-ma'mūl* can be gauged by the exceptionally large number of manuscripts in which it survives. Dirāyatī has enumerated upto 130 MSs.¹³ Sāzmān-e Asnād wa-Ketābkhāneh-ye Milli-ye Jumhuri-ye Islāmī holds eleven of these MSs (#5-2137/3, #5-1549, #5-1622, #5-20714, #5-26089, #5-2626, #5-22890, #5-1548, #5-2196, #5-3600, #5-367). Other MSs are also found in Tehran (Majlis-e Shūrā-ye Islāmī Library), Qum (Ketābkhāneh-ye Āstāneh-ye Muqaddas-e Ḥaḍrat-e Fāṭimeh-ye Ma'sūmeh; Ketābkhāneh-ye Mar'ashī; Ketābkhāneh-ye Markaz-e Iḥyā'-ye Mirāth-i Islāmī; Mu'assasa-ye Imām Šādiq etc.), Isfahan (Ketābkhāneh-ye Ketābkhānehhā-ye Iṣfahān), Mashhad (Ketābkhāneh-ye Madraseh-ye Nawwāb) among few other libraries and private collections.

The selected text deals with the topic of solitary reports (*al-akhbār al-āḥād*) and their role as legal sources; this topic is conventionally studied in the chapters of "probativity of solitary reports" (*ḥujjiyyat al-akhbār al-āḥād*) and "methods of resolving contradictory and conflicting reports" (*ta'ādul and tarjīḥ*). The first section [a] of the edited passages concerns the conditions that are required for the reports of solitary transmitters in order to be considered legally binding proofs. Al-Shaykh al-Bahā'ī enumerates five such conditions: adulthood (*bulūgh*), sanity (*'aql*), uprightness (*'adl*), accuracy (*ḍabt*) and belief (*īmān*). Kāzimī delves deeper into each of these conditions by rearranging his teacher's order. He examines the condition of uprightness (*'adl*) in greater depth. The question which he attempts to address here is whether Sunnis, or for that matter non-Twelve Shi'is (such as the Fāṭhiyya, the Nāwūsiyya, the Wāqifiyya) are sufficiently upright for their reports to be considered legally binding for Twelvers. The second section [b] examines the methods of appraising the transmitters and whether the testimony of a single upright Twelver scholar is a sufficient basis on which judgment could be passed on the trustworthiness, or otherwise, of a transmitter? In this section, Kāzimī deliberates on the instances in which scholars of *'ilm al-rijāl* have contradictory opinions vis-à-vis certain transmitters and offers methodological solutions to resolve such contradictions.¹⁴

وعدائهم وضبطهم واعيانهم والحمد لله الذي جعل لنا هذه النسخة من كتابه الكريم
 وليس في آية الميثاق شيء يوجب صدق الفاسق على الخطي في بعض الاصول بعد ذلك في حقه ونفى الاصحاح في توثيقه والاصحاح
 الموثوق به لا يثبت الا في بعض الاحكام والاصحاح في توثيقه لا يثبت الا في بعض الاحكام والاصحاح في توثيقه لا يثبت الا في بعض الاحكام
 الشيخ صا بشره واما المصنف في رواية عليه السلام في قوله تعالى ولا تأكلوا أموالكم بالباطل فلو ثبت في بعض النسخ
 فلا يخرج من مضمونها او غير مضمونها بطور
 ذكر السيد في جواب السائل التباينات حيث قال ان الكثر جازا الرواية وكثيرا
 عن امتناع عليهم العلم معطوفا على صحتها اما بالنسبة او بالامارة وعلا منه ذلك على صحتها
 وصدق راويها فهي موجبة معصية لمقطع وان كانت مودعة في الكتب لمستحضر من
 الاحكام التي كساه وفي الكلام في تمام القدح بالبحث عن احوال الاحكام جازان
 بكون طلبها لتكثير الفران وتسهيل السبيل العلم بصرف الخبر لا يعلم **ما الله** فصل
 للعمل بجزا الاحكام بل هو فيهم وعلمهم **ما الله** بعد ما ثبت من وقوع الغيبة بخبر الواحد لا بد من
 بيان الشروط المعبر عنها ومن روى الاول التكليف فلا يقبل روايته الموثوق ولا الاصل
 كان منزها وتحكم في المحذور المطبق والصبي غير المميز وربما نقل الاجتماع عليه ما لا يخفى عنه
 المطبق ولو لم يرد ذلك فلا مانع من قبول روايته حال لا فائدة وربما حال يفهم ان الرواية
 في من افاقته لم يقبل والا قبل وهو حسن واما الميرزا المعروف من مذاهب اصحاب
 عدم قبول روايته وهو مختار جمهور العامة ومعظم على القول بقبول روايته جازا لا قدرا
 فلا يمنع الاصل ولا ايراد الفرق ثانيا فان القدوة على خبرهم لا يثبتها في سائر النسخ
 ان عدم قبول روايته الفاسق معصية عدم قبول قوله بطريق اول فان الفاسق في التكليف
 حشنة من المعصية ربما يتبعه عن الاقدام على الكذب ولما كان ذلك الجعل لعلمه باسما التكليف
 عنه فلا مانع له من الاقدام على الكذب ولا طه اذا سمع وروي قبل المخرج اما المخرج
 وروي بعد ذلك ولا مانع منه لوجود المنع في مواجها العمل وعدم صلاحية مانعها
 في غير مائة الفاني الا بان معنى كونه اما عبادا واما طه هو المشهور من اصحاب وجوبه
 فاسق فلا يجوز العمل بغير قوله في ان جازاكم فاسق الآية وحكم المحذور الشيخ انه اجاز العمل
 بحر العطية من ضارهم بشرط ان لا يكون متما بالكدب وممكن عليه انما انما السبيل
 وحسنه في النفس مقتضى على ملازمة المتقون والمرددة ويراد بالقبول الاعتناء على كتابه
 والا حرا على الصغار وبالرواية الخلق افعال في زمانه ومكانه واسطر العمل له

رواه جازا مع التوثيق لا يثبت الا في بعض الاحكام
 بعد الاشارة الى التوثيق

المشهور

Figure 4.2 MS Houghton Library – Harvard University, Cambridge, US (#1651, MS Arab 231), fol. 112b

زبدة الأصول

الشيخ بهاء الدين محمد بن الحسين بن عبد الصمد الحارثي الهمداني العاملي الجبلي م 31-1030هـ

[a] فصل

يشترط في العمل بخبر الآحاد: بلوغهم [a.1]، وعقلهم [a.1]، وعدالتهم [a.3]، وضبطهم [a.4]، وإيمانهم [a.2]. واكتفى الشيخ عن الإيمان بالعدالة، محتجا بعمل الطائفة بخبر ابن بكير، وسماعة، وبني فضال، وأضرابهم. وليس في آية التثبت حجة عليه لمنع صدق الفاسق على المخطئ في بعض الأصول بعد بذل مجهوده، ونص الأصحاب على توثيقه. ولو جامع التوثيق التفسير لارتفع الوثوق بعدالة أكثر الموثقين من أصحابنا. وأما ما ينقل عن بعض المحققين من تفسير أبا ن عثمان مع توثيق الأصحاب له فلو ثبت لم ينهض حجة على الشيخ طاب ثراه. وأما الضبط فيراد به غلبة الذكر على السهو. وقد ظن إغناء العدالة عن شرطه لمنعها عن نقل ما لم يضبطه. وردّ بعدم منعها عن نقله ساهيا [فضلا] عن أنه غير مضبوط أو غير ضابط.

[b] فصل

[b.1] تركية العدل الواحد الإمامي كافية في الرواية، وفاقا للشيخ، والعلامة، وسائر المتأخرين وخلافا للمحقق وأتباعه وإلا زاد الاحتياط في الفرع على الأصل، ولدلالة آية التثبت على عموم قبول خبر الواحد إلا ما خرج بدليل كالشهادة قالوا: كل خبر شهادة فلا يكفي الواحد. قلنا: ممنوع، بل أكثرها غيرها كالرواية، ونقل الإجماع، وتفسير المترجم، وإخبار الطبيب بإضرار الصوم، والأجير بإيقاع الحج إلى غير ذلك. وقد بسطنا الكلام فيه في مشرق الشمسين¹ [b.2] وإذا تعارض الجرح والمعدل ولم ينحصر نفيه رجح الجرح ومعه الأكثر الأورع. والقول بالإطلاق متجه.

¹ مشرق الشمسين صص 43-45

Commentary

[a]

The [following] conditions must be fulfilled [in order for] the reports of solitary transmitters [to be considered binding proof]: [that the transmitter be] adult, sane, upright, accurate, and a believer. Al-Shaykh [al-Ṭūsī] dispensed with ‘belief’ (*īmān*) as a condition [since for him] ‘uprightness’ (*‘adāla*) was sufficient on the basis of the community’s [i.e. Twelver jurists’ precedent of] acceptance of the reports of Ibn Bukayr,¹⁵ Samā’a [b. Mihrān],¹⁶ the Banū Faḍḍāl,¹⁷ and others like them. However, there is no evidence in the “Reliability Verse”¹⁸ supporting [al-Shaykh al-Ṭūsī’s position], because it is not necessarily true that the term *fāsiq* [i.e. non-Twelver] applies to one who errs in certain beliefs (*uṣūl*) after having exerted himself to understand them and whom the community [of Twelvers] had already deemed trustworthy. If a transmitter could be deemed trustworthy and be discredited at the same time, then confidence in the uprightness of most of the community’s trustworthy transmitters could be in question. As for the discrediting of Abān b. ‘Uthmān¹⁹ by some scholars, despite his trustworthiness being asserted by [most scholars] of the Twelver community: even if that [i.e. the discrediting of Abān b. ‘Uthmān] is proven, it would not constitute a proof against al-Shaykh [al-Ṭūsī], may he rest in peace. As for ‘accuracy,’ (*ḍabt*) it means the preponderance of remembering over forgetting. Some have assumed ‘uprightness’ (*‘adāla*) to be sufficient [enough to the extent of dispensing with ‘accuracy’], because ‘uprightness’ should prevent the transmitter from narrating what he did not accurately memorise. This is rejected because uprightness [alone] does not prevent him from transmitting while being unaware that he was inaccurate or that [the report] he transmitted was not accurate in the first place.

[b]

[b.1]

The testimony of a single, upright Imāmī (i.e. Twelver) is sufficient for the transmission [of a solitary transmitter] to be accepted in accordance with [the opinion of] al-Shaykh [al-Ṭūsī], al-‘Allāma [al-Ḥilli], and most later scholars, but is in contrast to al-Muḥaqqiq [al-Ḥilli] and his adherents. Otherwise, precaution taken in regard to the ancillary matter (*far‘*, i.e. *‘adāla*) would exceed precaution taken in regard to the main matter (*aṣl*, i.e. the reliability of the *riwāya*). Also, the “Reliability Verse” provides a general proof (*dalāla*) for accepting any solitary report [as binding] except testimony, which is exempted by another proof [requiring a minimum of two witnesses]. They (our opponents) say: Every report is testimony, so a solitary transmitter does not suffice. We say: This [statement] is not accepted; most [solitary reports] are not [testimony], such as narration, transmission of scholarly consensus (*ijmā‘*), the explanation of a translator, the physician informing [a patient] of the harm of fasting, the person performing the pilgrimage on someone else’s behalf informing them of its fulfillment (*al-ajir bi-īqā‘ al-ḥajj*), etc. We have clarified this discussion in *Mashriq al-shamsayn*.²⁰

[b.2]

If appraisals by critics are contradictory [with one group ascertaining the transmitter’s uprightness (*mu‘addil*) and one group discrediting him (*jāriḥ*)], and the statement of the *mu‘addil* does not specifically address the criticism of the *jāriḥ*, then preference is given to the [appraisal of the] *jāriḥ*. [Preference may also be given to whichever of these two groups is] the more numerous and scrupulous. It is reasonable to consider this a general rule.

In what follows, **bold text** is the base text, the *Zubdat al-uṣūl* of al-Shaykh al-Bahā'i; the remainder is al-Kāzimi's commentary. Section markers in **bold** lower-case letters and numerals ([a], [b], [b.1] etc.) refer to passages in the *Zubdat al-uṣūl* (as per above).

غاية المأمول في شرح زبدة الأصول جواد بن سعد بن جواد الكاظمي م 1065هـ

[a] فصل يشترط للعمل بخبر الآحاد بلوغهم، وعقلهم ان

بعدهما ثبت من وقوع التعبد بخبر الواحد لا بد من بيان الشروط المعتبرة فيه، وهي أربعة:

[a.1] الأول: التكليف، فلا تقبل رواية المجنون ولا الصبي وإن كان مميزاً، والحكم في المجنون المطبق والصبي غير المميز ظاهر. وربما نقل الإجماع عليه، أما المجنون غير المطبق وهو الدوري فلا مانع من قبول روايته حال الإفاقة، وربما قال بعضهم إن أثر جنونه في زمن إفاقته لم يقبل وآل قبل² وهو حسن، وأما المميز فالمعروف من مذهب الأصحاب عدم قبول روايته وهو مختار جمهور العامة، وبعضهم على القبول قياساً على جواز الاقتداء به وضعفه ظاهر³ لمنع الأصل أولاً، وإبداء الفرق ثانياً، فإن القدوة على مذهبهم لا يشترط فيها شيء. والتحقيق إن عدم قبول رواية الفاسق تقتضي⁴ عدم قبول قوله بطريق أولى فإنّ للفاسق من حيث التكليف⁵ خشية من الله تعالى ربما تمنعه من الإقدام على الكذب، ولا كذلك الصبي لعلمه بانتفاء التكليف عنه فلا مانع له من الإقدام على الكذب. هذا كله إذا سمع وروى⁶ قبل البلوغ أما لو سمع قبله وروى بعده فلا مانع منه لوجود مقتضى وهو أخبار العدل وعدم صلاحية مانعية ما⁷ يفرض مانعاً.

2 missing in M2. وآل قبل

3 missing in M2. The MS is distorted in this instance.

4 M2: يقتضى

5 M2: instead of فإنّ للفاسق من حيث التكليف

6 M2: فروى

7 missing in M2. ما

Commentary

Kāzimī's commentary delves into the minutiae of al-Shaykh al-Bahā'ī's text on appraising solitary reports (*khābar al-āḥād*). He does so by refining legal definitions and exhaustively examining which juristic positions are logically consistent, and therefore correct in his view, through complex examples with multiple variables. Kāzimī appeals to various forms of reasoning to make his arguments as well as discredit those he does not agree with, utilising neo-Aristotelian logic and Islamic philosophical conceptualisations that he does not explicitly outline; this approach makes his jurisprudential writing challenging to follow and decipher. Through this process, Kāzimī explicitly puts not only al-Shaykh al-Bahā'ī's views under the microscope, but also those of the major "classical" jurists al-Shaykh al-Ṭūsī, al-Muḥaqqiq al-Ḥillī, and al-ʿAllāma al-Ḥillī, as well as later juristic positions and methods that were generally accepted in his time. His main aim is thus to gather all relevant Twelver juristic positions on the matter in order to derive a consistent and rationally sound approach to appraising solitary, non-Twelver transmitters and the question of the acceptance of their reports.

[a.1] al-Shaykh al-Bahā'ī's section begins with the necessary conditions for a solitary transmitter to have his report accepted by Twelver jurists. After first asserting that the acceptability of the use of solitary reports is already well established, Kāzimī proceeds to analyse the five conditions laid down by al-Shaykh al-Bahā'ī. He combines adulthood (*bulūgh*) and sanity (*ʿaql*) under the category of *taklif*, the capacity to be held accountable, in contrast to the examples he gives of the young boy who is unable to exercise discretion (*al-ṣabiyy ghayr al-mumayyiz*) and the completely "insane" person (*al-majnūn al-muṭbiq*). However, whereas those examples clearly demonstrate lack of *taklif*, Kāzimī wishes to examine the more complex cases of the transmission of the precocious young boy (*al-ṣabiyy al-mumayyiz*) and the insane person who experiences intermittent moments of clarity (*al-majnūn ghayr al-muṭbiq wa-huwa al-dawrī*), especially since Kāzimī acknowledges the difference of juristic opinions regarding accepting their transmitted reports. Kāzimī first breaks down the discussion regarding *al-majnūn ghayr al-muṭbiq* on the basis of whether the insane person's moments of clarity are clouded by his condition, although Kāzimī does not explain how such interference would be determined. If the person's insanity interferes with his moments of clarity, then his transmission during his moments of clarity is rejected. Conversely, if it does not, then his transmission is accepted.

As for the precocious boy, Kāzimī notes that Twelver jurists and the majority of Sunni scholars (*al-ʿamma*) do not accept his transmission. However, Kāzimī dismisses the acceptance of a precocious boy's transmission by some Sunni scholars on the basis of analogy (*qiyās*) of permitting a young boy to lead prayer (*iqtidāʾ*). Kāzimī considers this argument weak for two reasons: because the permission for a boy to lead prayer is not a basic premise (*aṣl*) that everyone agrees on, and because prayer itself is a different category than transmission. Instead, Kāzimī argues that acceptance of a precocious boy's transmission must be seen as comparable to that of a *fāsiq*, which he uses here to refer to an immoral adult. His rationale is that a boy is more prone to lying than a *fāsiq* because a *fāsiq* is at least accountable both in this world and in the afterlife by virtue of being an adult. However, the precocious young boy, knowing he cannot be held accountable because of his age, is not similarly restricted, and thus, Kāzimī argues, there is nothing to prevent him from lying in his narration. Thus, if the *fāsiq* is liable to lying in his narration, all the more so the precocious boy, so the rejection of the *fāsiq*'s transmission must mean the rejection of precocious boy's transmission, which Kāzimī asserts as the correct opinion. While this position would clearly apply to the case of a precocious boy who heard a narration and transmitted it

[a.2] الثاني: ⁸ الإيمان، بمعنى كونه إماميا. واشتراطه هو المشهور بين الأصحاب، وحجتهم إن غير الإمامي فاسق ⁹ فلا يجوز العمل بخبره لقوله تعالى: ﴿إِنْ جَاءَكُمْ فَاسِقٌ﴾ ¹⁰ - الآية-. وحكى المحقق عن الشيخ أنه أجاز العمل بخبر الفطحية ومن ضارعههم ¹¹ بشرط أن لا يكون متهما ¹² بالكذب، وسنتكلم عليه إن شاء الله تعالى.

[a.3] الثالث: العدالة، وهي كيفية في النفس تبعث على ملازمة التقوى والمروءة. ويراد بالتقوى الاجتناب عن الكبائر والإصرار ¹³ على الصغائر، وبالمروءة التخلُّق بخلق أمثاله في زمانه ومكانه. واشتراط العدالة هو المشهور بين الأصحاب، ومنه يلزم عدم قبول خبر ¹⁴ مجهول الحال. وظاهر جماعة من المتأخرين الميل إلى العمل بخبر مجهول الحال وهو اختيار جماعة من العامة. وقد نقل المحقق في أصوله عن الشيخ رحمه الله أنه قال يكفي كون ¹⁵ الراوي ثقة متحرزا عن الكذب في الرواية وإن كان فاسقا بجوارحه، وادعى عمل الطائفة على أخبار جماعة هذه صفتهم. وأنكر المحقق هذه الدعوى مطالبا بدليلها، ولو سلَّناها لاقتصروا على المواضع التي عملت الأصحاب ¹⁶ فيها بأخبار خاصة ولم يجز التعدي في العمل إلى غيرها. ثم قال: «و¹⁷دعوى التحرز عن الكذب مع ظهور الفسق مستبعد»¹⁸ هذا كلامه وهو قوي.

وقد يستدل على اشتراط العدالة بالأمر بالتثبت عند خبر الفاسق ولا واسطة في الواقع بين وصفي العدالة والفسق، ومجهول الحال إنما توسط ¹⁹ بين من علم فسقه أو عدالته. ولا ريب أن تقدم العلم بالوصف غير داخل ²⁰ في حقيقة الوصف. وإذا كان وجوب التثبت في الآية معلقا بنفس الوصف لا بما ²¹ تقدم العلم به كان مقتضاها إرادة البحث والفحص عن حصوله وعدمه. و²²نظير ذلك إذا قال القائل: اعط كل بالغ رشيد من هذه الجماعة مثلا درهم، فإنه يقتضي إرادة السؤال والفحص عن اجتماع هذين الوصفين لا الاقتضاء على من سبق العلم باجتماعهما فيه. ويؤيد ذلك تضمن الآية التعليل بقوله: ﴿أَنْ تُصِيبُوا قَوْمًا بِمِثَالِهِ فَتُصِيبُوا عَلَى مَا فَعَلْتُمْ نَادِمِينَ﴾ ²³. ومن البين أن الوقوع في الندم بظهور عدم صدق الخبر يحصل من قبول إخبار من له صفة الفسق في الواقع حيث لا حجر معها عن الكذب، ولا مدخلة لسبق العلم بحصولها في ذلك، على أن لنا أن نقول هذا التعليل يقتضي أن كلما لم يؤمن معه الندم لا يقبل قوله، خرج المؤمن ²⁴ العدل بالإجماع فيبقى الباقي على المنع، ومنه محل النزاع. ²⁵ وجواب الشيخ يعلم مما ذكره المحقق.

بقي الكلام في اكتفاء العدالة عن الإيمان كما اختاره الشيخ محتجا بعمل العصابة المحقة بخبر عبد الله بن بكير

8 In marginal note of M.

9 H and M2: إنه فاسق.

10 Qur'an 49:6.

11 missing in M2. ومن ضارعههم.

12 متهم is missing in M2.

13 In the marginal note of M: عدم الإصرار.

14 Missing in H and in the marginal note of M.

15 Missing in H and in the marginal note of M.

16 Missing in M and H.

17 Missing in M2.

18 معارج الأصول ص 216

19 هو وسط: M2.

20 In the marginal note of M: لما كان داخلًا أو لو كان فسقًا، ولا صدق العدل إلا على من علم عدالته وليس كذلك.

21 missing in M2.

22 Missing in M2 and H.

23 Qur'an 49:6.

24 المؤمن: M2.

25 In M: المجهول الحال: at the end of the page.

before reaching the age of maturity, Kāzīmī presents another case that leads to a different conclusion: hearing a narration before reaching maturity and then transmitting it after adulthood. In this case, such transmission is acceptable, because then the transmitter, upon reaching adulthood, becomes subject to accountability for what he transmits, and his transmissions are thus considered the reports of an upright person (*akhbār al-ʿadl*).

[a.2] Kāzīmī then proceeds to discuss al-Shaykh al-Bahāʾī's condition that the transmitter must have "belief" (*īmān*) in order for his solitary report to be accepted. Kāzīmī defines "belief," in accordance with most Twelver jurists, as meaning the transmitter must be Twelver. He cites the "Reliability Verse",²¹ as proof of the necessity of verifying the report of a *fāsiq*, which Kāzīmī here specifies to mean anyone who is a non-Twelver, that is, is incorrect in his beliefs rather than immoral in his actions. Kāzīmī mentions that al-Muḥaqqiq al-Ḥilli reported that al-Shaykh al-Ṭūsī permitted acceptance of the reports of the Faṭḥiyya²² and others like them as long as they had not been accused of lying. Kāzīmī, who rejects al-Shaykh al-Ṭūsī's argumentation regarding this point, discusses it in more detail in the following section.

[a.3] The subsequent stipulation that Kāzīmī expounds on is uprightness (*ʿadāla*), which he defines as the state in which a person expresses God-fearing and virtue (*al-taqwā wa-l-muruwwa*). He defines a "God-fearing" person as someone who completely avoids major sins (*al-kabāʾir*) and does not repeatedly engage in minor sins (*al-ṣaghāʾir*). He defines "virtue" as adhering to the standards of morality among the transmitter's peers and the people of his region. Kāzīmī asserts that the condition of uprightness is standard among the Twelver jurists, which would entail the exclusion of reports by transmitters whose moral status is unknown. However, he notes that it is clear that some of the later Twelver scholars tend to accept solitary reports that are transmitted by a transmitter of undetermined reliability (*majhūl al-ḥāl*), which, he believes, is also the preference of some Sunni scholars (*al-ʿamma*). By way of example, Kāzīmī references al-Muḥaqqiq al-Ḥilli in his book on *uṣūl* (referring to *Maʿārij al-uṣūl*) to point to al-Shaykh al-Ṭūsī as one of the major Twelver scholars who accept reports by *majhūl al-ḥāl*.²³ According to al-Muḥaqqiq al-Ḥilli, al-Shaykh al-Ṭūsī states that a narrator is accepted as trustworthy if he is not known to lie about narration, even if he is considered an immoral person in other parts of his life; al-Muḥaqqiq al-Ḥilli understands this statement as applying to the issue of *majhūl al-ḥāl* since a transmitter of undetermined reliability could possibly be an immoral person. Whereas al-Shaykh al-Ṭūsī claimed that the Twelver jurists (*al-ṭāʾifa*) had accepted reports by transmitters in this category, al-Muḥaqqiq al-Ḥilli himself rejected this claim, and thus the acceptance of the reports of a *majhūl al-ḥāl*, on the basis of the weakness of its reasoning; he states that the idea that a transmitter who is known to be immoral would also refrain from lying is unlikely. He further underscores his point by stating that even if this type of transmission were acceptable, it would only be permitted for this specific instance, i.e. only when the majority of Twelver jurists acted on the basis of a specific report; it should thus not be generalised as a principle applying to all reports falling under the same category. Kāzīmī agrees with al-Muḥaqqiq al-Ḥilli's position of the unreliability of the immoral person.

Kāzīmī elaborates on al-Shaykh al-Bahāʾī's inclusion of the "Reliability Verse" as the basis for uprightness being a condition of a transmitter's trustworthiness, understanding the second half of the verse to mean one must seek to verify the report or statement of one who is *fāsiq*, lest one cause harm to the community out of ignorance and become regretful due to wrongdoing. Kāzīmī goes further to assert that there can be no middle ground between immorality and uprightness. A transmitter's status cannot be both; he must be immoral or upright, and so cannot be upright

مع كونه فطحي المذهب، وبخبر سماعة بن مهران وبني²⁶ فضال مع كونهم من أكبر الفطحية وأضرابهم²⁷ من نحو علي ابن أبي حمزة البطائني وعثمان بن عيسى الرواسي. قال في العدة: «وأما العدالة المراعاة في ترجيح أحد الخبرين على الآخر، فهو أن يكون الراوي معتقداً للحق، مستبصراً، ثقة في دينه، محترزاً عن الكذب، غير متهم فيما يرويه. فأما إذا كان مخالفاً في الاعتقاد لأصل²⁹ المذهب وروى مع ذلك عن الأئمة عليهم السلام نظر فيما يرويه، فإن كان هناك³⁰ بالطريق الموثوق بها ما يخالفه وجب أطراح خبره، وإن لم يكن هناك ما يوجب أطراح خبره ويكون هناك ما يوافقه وجب العمل به، وإن لم يكن من الفرقة المحقة خبر يوافق ذلك ولا يخالفه ولا يعرف لهم قول فيه وجب أيضاً العمل به».³¹ وقال -بعد أسطر-: «إذا³² كان الراوي من فرق الشيعة مثل الفطحية، والناووسية، والواقفية، أو من العامة نظر فيما يرويه فإن كان هناك قرينة تعضده أو خبر آخر من جهة الموثقين وجب أطراح ما اختصوا بروايته والعمل بما رواه الثقة³³، وإن كان ما روه³⁴ ليس هناك ما يخالفه ولا يعرف من الطائفة العمل بخلافه وجب أيضاً العمل³⁵ به إذا كان متحرجاً³⁶ في روايته موثقاً³⁷ به³⁸ في أمانته وإن كان مخطئاً في أصل الاعتقاد. ولأجل³⁹ ما قلناه⁴⁰ عملت الطائفة بأخبار الفطحية مثل عبد الله بن بكير وغيره، وأخبار الواقفية مثل سماعة بن مهران، وعلي بن أبي حمزة، وعثمان بن عيسى، ومن بعد هؤلاء ما رواه بنو فضال، والطاطريون،⁴³ وغيرهم فيما لم يكن عندهم فيه خلاف».⁴⁴ هذا كلامه وهو ناطق بأن المخالف في المذهب قد يعمل بقوله وأجاب عنه المحقق بـ«أنا لم نعلم إلى الآن أن الطائفة عملت بأخبار هؤلاء».⁴⁵ وقد يجاب عنه أيضاً: بأن غير المؤمن⁴⁶ فاسق. فإن من⁴⁷ كلام أهل اللغة أن الفسق هو الخروج عن طاعة الله تعالى،⁴⁸ وهو عام في الفروع والأصول. وقد بينا سابقاً أن الفسق من موانع القبول، وإلى هذا نظر العلامة في تفسيره أبان بن عثمان الأحمر على ما نقله عنه⁴⁹ نفي المحققين في حواشي الخلاصة حيث قال: «سألت والدي عن أبان بن عثمان الأحمر فقال: الأقرب عدم قبول روايته لقوله تعالى: ﴿إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا﴾»⁵¹ وأي فسق أعظم من عدم الإيمان»⁵²

26 M2: وأولاد

27 M2: instead of مضافهم وأضرابهم؛
H: وكذا أضرابهم

28 missing in M2 and also الطائي instead of
الطائني

29 M: لأهل

30 Missing in M2.

31 149-148 عدد الأصول صص.

لما روى عن الصادق ع: «إذا نزلت بكم حادثة لا تجدون حكماً فيما روى عنا فانظروا إلى ما روهوا عن علي فاعملوا به» طبرسي

32 M2: إن؛ H: وإذا

33 M2: الفقيه

34 H: رواه

35 H: ولا يعرف من الطائفة العمل بخلافه وجب العمل به
ولا يعرف من instead of بخلافه وجب العمل أيضاً به
الطائفة العمل بخلافه وجب أيضاً العمل

36 متحرجاً

37 موثقاً

38 Missing in M.

39 M: والأصل؛ M2: ولأصل

40 M2: قلنا

41 Missing in M2.

42 Missing in M2.

43 M2: والمطاطرون

44 151-149 عدد الأصول صص

45 M2: 215 معارج الأصول ص

46 المؤمن من فاسق

47 M2: فإن الظاهر في

48 Missing in M2 and H.

49 Missing in M2.

50 In the marginal notes of M.

51 Qur'an 49:6.

52 خلاصة الأقوال ص 74

in some aspects and not in others. It is a matter of knowing or not knowing one's status. If one does not know a transmitter's status, the "Reliability Verse" compels him to investigate and examine the transmitter's characteristics until his status can be determined. Kāzimī then gives the example of a command to someone to give a dirham to every upright male in a particularly group who had reached maturity; Kāzimī then rhetorically asks, "Wouldn't the person responsible have to check which males currently met these two conditions in order to properly carry out this command, instead of relying on what he or others knew of them previously?" In this way he demonstrates that the issue at stake is that a person's status may have changed from child to adult since the last time someone checked their status. Kāzimī argues that it is clear from the verse that regret occurs when one accepts a report from a narrator known to be *fāsiq* because *fiṣq* does not deter one from lying, and prior knowledge of *fiṣq* is not the main issue but the likelihood of regret that would occur after accepting the report of a *fāsiq*. According to scholarly consensus, the only type of transmitter who is exempt from this type of examination is the upright transmitter who is also a believer (i.e. Twelver); therefore those who do not fall in this category are not considered upright.

For Kāzimī, the remaining discussion on this section concerns the issue of stipulation of uprightness for a transmitter without the concomitant stipulation of "correct belief," a point that al-Shaykh al-Bahā'ī mentioned as al-Shaykh al-Ṭūsī's position, with which al-Shaykh al-Bahā'ī and Kāzimī both disagree. al-Shaykh al-Ṭūsī based his claim on the accepted practice of the Twelver jurists (*al-ʿiṣāba al-muḥiqqa*) regarding the reports of non-Twelver Shi'is such as the Fathīyya, Nāwūsiyya,²⁴ Wāqifiyya,²⁵ or the Sunnis. That accepted practice meant that if there was additional corroborating information, or another verified report, then the report that overlaps must be preserved and the ones that disagree must be discarded. Kāzimī cites al-Shaykh al-Ṭūsī's statement in *al-Udda*²⁶ that the determining factor in preferring one report over another is that the narrator believes in the "true" faith, adheres to his religious practice, refrains from lying, and is never accused of distorting his narration. Yet he notes al-Shaykh al-Ṭūsī's exception: if the creed of the transmitter does not conform to that of the adherents of the Twelver school (*mukhālīfan li-ahl al-madhab*) but he narrates from the Imams, then his reports must be examined. If his transmission is contradicted by a transmission of a trustworthy chain (i.e. of Twelver transmitters), then his report must be discarded. However, if there is nothing in the Twelver corpus that agrees or disagrees with the report, and there is no known precedent among the Twelvers that disagrees with it, then it is compulsory to accept it. Al-Muḥaqqiq al-Ḥillī, Kāzimī cites, rejects al-Ṭūsī's stipulation, arguing that there is no evidence that accepting reports of non-Twelver Shi'is is an accepted or established practice of the Twelver jurists.²⁷

Kāzimī also notes that lexicographers (*ahl al-lughā*) define *fāsiq* as "one who is not obedient to God," which may include disobeying God through acts or "incorrect" beliefs. This implies, Kāzimī asserts, that whoever is not a Twelver is a *fāsiq*. Having had previously established in Section [a.1] that *fiṣq* necessitates rejection of a report, Kāzimī notes that al-ʿAllāma al-Ḥillī had attributed *fiṣq* to Abān b. ʿUthmān al-Aḥmar, which Kāzimī observed from Fakhr al-Muḥaqqiqīn's (d. 771/1369-70) comments in the margins of *al-Khulāṣa*: that after asking about Abān b. ʿUthmān al-Aḥmar, his father, al-ʿAllāma al-Ḥillī, had responded that the most appropriate position was rejection of his narration according to the "Reliability Verse", commenting, "and what is a greater *fiṣq* than being a non-Twelver."²⁸ However, Kāzimī notes that al-Shaykh al-Bahā'ī rejects this position because the term *fāsiq* cannot be applied to one who misunderstands certain beliefs

انتهى كلامه. وهو ناظر إلى⁵³ ما قلناه. وردّه المصنف بالمنع من صدق الفاسق على المخطئ في⁵⁴ بعض الأصول⁵⁵ بعد بذله⁵⁶ مجهوده⁵⁷ و⁵⁸ بعد نصّ الأصحاب على توثيقه، فإن نصّ الأصحاب على توثيق أحد مانع من صدق الفاسق عليه، إذ لو لم يكن مانعاً من ذلك لجاز صدق الفاسق على شخص مع توثيق الأصحاب⁵⁹ وهو موجب لارتفاع الوثوق بعدالة أكثر الموثقين من أصحابنا الإمامية. وذلك مؤد إلى سد باب العمل بخبر الواحد. وإذا لم يكن الفاسق صادقاً على مثل أولئك لا يكونون داخلين في الآية فلا يكون الآية حجة على الشيخ العامل بخبرهم. وقول العلامة في تفسيق أبان بن عثمان لا ينهض حجة على الشيخ إذ المسألة اجتهادية. وفيه نظر يعلم ممّا ذكرناه. فإن الظاهر أن فساد العقيدة لا يجتمع العدالة،⁶⁰ وكون الاتصاف بالفسق موقفاً على اعتقاد الفاعل أن فعله معصية تمّ. فظاهر قوله تعالى: ⁶¹﴿وَالَّذِينَ جَاهَدُوا فِينَا لَنَهْدِيَنَّهُمْ سُبُلَنَا﴾⁶² -الآية- دالّ على أن⁶³ مثل⁶⁴ هذا لم يبذل مجهوده. والتوثيق في كلام الأصحاب إن وقع مطلقاً غير مقيد بكون الموصوف به فطحيّاً أو واقفياً ثبت⁶⁵ التوثيق المعتبر وإن اقترن⁶⁶ بأحدهما فالمراد به حينئذ كونه ثقة في مذهبه، وذلك لا ينافي كونه فاسقاً عندنا معاشراً للإمامية. ومنه يعلم أن الملازمة في قوله ولو جامع التفسيق⁶⁷ التوثيق الخ ممنوعة، أن جماعة⁶⁸ التفسيق التوثيق على الوجه المتقدم لا يوجب ارتفاع الوثوق مع الإطلاق⁶⁹ وعدم إظهار المنافي. وكلام العلامة⁷⁰ ناظر إلى ما قلناه وهو تام. والحق إن قول المصنف هنا بعيد بعد ملاحظة ما أسلفناه.

[a.4] الرابع: الضبط، ولا خلاف في اشتراطه فإن⁷¹ من لا ضبط له قد يسهو عن بعض الحديث ويكون ذلك البعض مما يتم به فائدته ويختلف الحكم بعده، أو⁷² يسهو فيزيد في الحديث ما يضطرب به معناه، أو يبدل لفظاً بآخر، أو⁷³ يروي عن المعصوم ويسهو عن الوساطة مع وجودها إلى غير ذلك من الأسباب الموجبة للاختلال.⁷⁴ والمراد بالضبط المشترط أن يغلب ذكره على سهوه، فلو عرض له السهو نادراً لم⁷⁵ يقدح إذ لا يكاد يسلم من ذلك أحد كما لا يخفى. قال المحقق: ولو كان زوال السهو أصلاً شرطاً في قبول الرواية لما صح العمل⁷⁶ إلا عن معصوم

53 M2: على

54 In the marginal notes of M and missing in H.

55 M2: الأحوال

56 M2: بذل

57 Missing in M2.

58 This sentence is repeated in M:

فإن نصّ الأصحاب على توثيق أحد مانع من صدق الفاسق عليه، إذ لو لم يكن مانعاً من ذلك لجاز صدق الفاسق على شخص مع توثيق الأصحاب له. in H: فإن نصّ الأصحاب على توثيق أحد مانع من صدق الفاسق عليه إذا لم

59 M: لا يقع

60 M2: not clear ؟! العلم

61 Missing in M.

62 Qur'an 29:69.

63 Missing in H.

64 Missing in M2.

65 M2 and H: يثبت

66 M2: أقرن

67 H: الفسق

68 H: جماعة; M: إذ تجماع

69 In marginal note of M:

أي إطلاق الأصحاب لفظ الثقة على شخص من غير تقييد بكونه فطحيّاً، أو واقفياً، أو مثل ذلك مع عدم ظهور المنافي فيه لا يوجب ارتفاع الوثوق به. وإذا قلنا أن التفسيق يجمع التوثيق على الوجه الذي ذكره المصنف وهو أن يكون الراوي ثقة عندنا فاسقاً في مذهبه. ع ل

كلام العلامة instead of كلامه M2:

71 M2: قال instead of قال

72 M2: أو instead of و

73 M2: أو instead of و

74 M2: للاختلاف

75 M2: لا

76 Missing in M2.

(*uṣūl*) after having exerted himself to understand them and after having been deemed trustworthy by Twelver scholars.

Kāzimī agrees with al-Shaykh al-Bahā'ī that if the term *fāsiq* can be applied to someone who is already deemed trustworthy by Twelver scholars, that would mean that the reliability of most trustworthy Twelver narrators (*min aṣḥābinā l-Imāmiyya*) would be questioned, and so the whole system of appraising solitary reports would collapse. Thus, for al-Shaykh al-Bahā'ī, a narrator who has been determined to be trustworthy by Twelver scholars cannot be later deemed *fāsiq*. Kāzimī then states that if the term “*fāsiq*” does not apply to non-Twelvers, then the “Reliability Verse” would not apply to them and would not be considered a proof against accepting their reports. Also, according to Kāzimī, al-ʿAllāma al-Ḥilli's consideration of Abān b. ʿUthmān as *fāsiq* was based on a personal opinion that does not constitute an argument against al-Shaykh al-Ṭūsī, who accepted non-Twelver reports under certain conditions. In summary, Kāzimī and al-Shaykh al-Bahā'ī consider al-ʿAllāma al-Ḥilli's opinion that non-Twelvers are *fāsiq* by default to be unproven. Hence, non-Twelvers who were considered trustworthy by Twelver scholars cannot be declared *fāsiq*.

After thus elucidating the issues with al-Shaykh al-Bahā'ī's reasoning that *fisq* and trustworthiness cannot be attributed to the same person, Kāzimī disagrees and provides his own reasoning. Kāzimī bases the characterisation of someone as *fāsiq* on one's belief (*i'tiqād*) because incorrect belief is a disobedience to God. Kāzimī then supports his argument with a section of, *wa-l-ladhina jāhadū finā la-naḥdiyannahum subulanā* (“...and those who struggle for Us, We will guide them...”).²⁹ Kāzimī interprets this part of the verse to indicate that a non-Twelve is considered *fāsiq* because he did not exert sufficient effort to find the “truth”. Therefore, theological speaking, any non-Twelve is considered *fāsiq* in belief by default. According to this logic, if one were to accept a transmission from a non-Twelve that would indicate that he considered the non-Twelve trustworthy in transmission, leading to the conclusion that *fisq* and trustworthiness in the same person could exist at the same time in this specific case, as Kāzimī asserts. According to Kāzimī, if a transmitter is mentioned as trustworthy by Twelver scholars without specifying that he is a Faṭḥī or Wāqifī, then this is considered proper verification, because the assumption is that the transmitter in this case is a Twelver. However, if the transmitter is in fact mentioned as a Faṭḥī or Wāqifī, then the transmitter is understood to be trustworthy according to his own community, although it does not negate the fact that he is considered a *fāsiq* by the Twelvers. Accordingly, for Kāzimī, one can be considered upright and *fāsiq* at the same time in such situations when one is a non-Twelve transmitter known to be of good standing in his own community. Drawing from al-ʿAllāma's argument, Kāzimī argues that al-Shaykh al-Bahā'ī's opinion is an implausible one, and that trustworthiness and *fisq* can in fact coexist in certain cases.

[a.4] The final condition that Kāzimī expounds on is accuracy (*ḍabt*); he notes that there is no doubt regarding accuracy being a condition, because a transmitter who narrates a report without accuracy could distort its meaning or affect its reliability by omitting a transmitter in its *isnād*. Kāzimī clarifies al-Shaykh al-Bahā'ī's definition of accuracy as meaning the “preponderance of remembering over forgetting” as referring to one who rarely forgets or errs, and thus causes no harm, since it is impossible for anyone to have an infallible memory; hence, al-Muḥaqqiq has argued that accuracy must be a condition, an argument that Kāzimī endorses.³⁰ Additionally, Kāzimī considers an argument of al-Shahīd al-Thānī (d. 965/1558) in his work *al-Dīrāya* that uprightness should suffice as a condition because an upright transmitter would not narrate something unless he knew he could do so accurately.³¹ Kāzimī dismisses this reasoning, arguing that

من السهو وهو باطل إجماعاً من القائلين بالخبر.⁷⁷ هذا كلامه ولا يخفى قوته. لكن⁷⁸ يبقى الكلام في أن العدالة تمنع عن رواية⁷⁹ ما ليس بمضبوط عنده، فيغني اشتراطها عن اشتراطه.⁸⁰ وبذلك صرح شيخنا الشهيد الثاني في الدراية بناء على أن العدل لا يروي ما ليس بمضبوط عنده على الوجه المعتبر لأن عدالته تمنعه⁸¹ عن⁸² ذلك.⁸³ وفيه نظر إذ العدالة إنما تمنع عن تعمد الكذب لا عن السهو فيه فإن العدل إذا كان كثير السهو ربما سهى عن كون الحديث غير مضبوط عنده أو كونه غير ضابط له فينقله وإن كان عدلاً، وحينئذ⁸⁴ لا بد⁸⁵ من ذكره معها ولا يكتفى بها عنه. وقد اكتفى أصحابنا -رضوان الله عليهم- عن الأمرين بلفظ الثقة لدالتها على صفة زائدة على لفظ العدل وهي صفة الضبط إذ هو مشتق من الوثوق ولا وثوق بمن⁸⁶ ساوى⁸⁷ سهوه ذكره⁸⁸ أو غلب سهوه عليه ولعل ذلك هو الباعث لهم على العدول في بيان التعديل عن لفظ عدل إلى لفظ⁸⁹ ثقة.

[b.1] قال مد ظله: تزكية العدل الواحد الإمامي كافية في الرواية وفقاً للشيخ، والعلامة، وسائر المتأخرين وخلافاً للمحقق وأتباعه وإلا زاد الاحتياط في الفرع على الأصل، ولدلالة آية التثبت على عموم قبول خبر الواحد إلا ما خرج بدليل كالشهادة.⁹⁰ أقول: طريق معرفة العدالة أمران: الاختبار والتزكية. والأول يحصل بالصحة المتأكدة والملازمة التامة بحيث يظهر له من القرائن ما يدل على ثبوت خوف في قلبه مانع من الكذب والإقدام على المعصية. والثاني مما اختلف فيه أصحابنا. فالأستاذ المصنف، والعلامة، وسائر المتأخرين على الاكتفاء في التزكية بالعدل الواحد الإمامي وكذا في الجرح وهو الحق. وذهب المحقق وأتباعه إلى اشتراط العدلين في كل من التزكية والجرح. واستدل المصنف على الأول بأن العدالة شرط في الرواية وشرط الشيء فرعه والاحتياط في الفرع لا يزيد على الاحتياط في الأصل. وقد اكتفى في الأصل أعني الرواية بواحد فيكفي الواحد أيضاً في الفرع أعني العدالة وإلا زاد الاحتياط في الفرع على الاحتياط في الأصل. فإن قلت: الاحتياط في الفرع قد يزيد على الأصل، فإن هلال رمضان يثبت⁹¹ بشاهد واحد كما ذهب إليه بعضهم ويحتاج في تزكية إلى اثنين. قلت: قد خرج مثل هذا بالنص والخرج بالنص لا يرد نقضاً. فإن قلت: للخصم أن يقول لا يلزمي ما ذكرتم من زيادة الفرع على الأصل فإني أشرت على الأصل أعني الرواية ثلاثة أخبار:⁹² واحد بها واثنين بعدالة⁹³ رواها واشترط في الفرع أعني العدالة اثنين لا غير فأين الزيادة في الفرع؟! قلت: هو يقبل رواية عدل واحد زكاه عدلان، ولا يقبل

77 معارج الأصول ص 218

78 ولكن M2:

79 روايته M2 and H:

80 M2: عن اشتراطه ما ليس بمضبوط عنده عندته فيغني اشتراطها

81 M2: تمنع

82 Missing in M2.

83 الرعاية في علم الدراية ص 186

84 Missing in M2.

85 M2: فلا بد

86 H: في

87 In M2: يتساوى Mashriq al-shamsayn: يتساوى

88 وذكره M2:

89 Missing in M and M2.

90 In the marginal note of M and H, the scribe has chosen to record the remaining passage from the Zubda:

قالوا: كل خبر شهادة فلا يكفي الواحد. قلنا: ممنوع، بل أكثرها غيرها كالرواية، ونقل الإجماع، وتفسير المترجم، وإخبار الطبيب بإضرار الصوم، والأجير بإيقاع الحج، إلى غير ذلك وقد بسطنا الكلام فيه في مشرق الشمس. متن

91 Missing in M2.

92 M2: أخبار أخبار

93 M2: برواية

an upright person's probity would only prevent him from lying about a report, not forgetting its details, so he could still forget parts of a report or even the fact that he is not accurate in his reporting. Kāzimī adds that Twelver scholars (*aṣḥābunā*) have attempted to cover both uprightness and accuracy by the condition of reliability (*thiqa*), for reliability entails both uprightness and accuracy; one who often forgets cannot be considered reliable, and so must have his reports corroborated. For that reason, they have preferred the word *thiqa* over *'adl*.

[b] Section

This section focuses on two main issues: that requiring to have more than one upright Twelver attest to the reliability of a transmitter is excessive, and that if a transmitter's reliability has been equally corroborated by a trustworthy person and criticised by another, the criticism of the transmitter's reliability is given preponderance unless the corroborators are more numerous and scrupulous than the critics.

[b.1] Commenting on al-Shaykh al-Bahā'ī's discussion on the sufficiency of a single, upright, Twelver (*Imāmī*) in determining a transmitter's reliability, Kāzimī asserts that there are two ways of ascertaining uprightness: the critic's long-term familiarity with the transmitter (*ikhtibār*) and testimony or appraisal from others (*tazkiya*). For Kāzimī, long-term familiarity consists of an adequate level of companionship, in which one can witness various factors that indicate fear of God, lack of inclination to lie, and abstention from committing sin. Kāzimī notes that al-Shaykh al-Bahā'ī, al-'Allāma al-Ḥillī, and the later scholars agree that the attestation of one upright Twelver to a transmitter's uprightness or lack thereof is sufficient to determine the status of the transmitter's reliability, which Kāzimī holds as the correct position. The other position that Kāzimī notes was taken up by al-Muḥaqqiq al-Ḥillī and his followers, which stipulated that there must be two upright witnesses to determine whether a transmitter is upright or not. Kāzimī further explains the position of al-Shaykh al-Bahā'ī in contrast to that of al-Muḥaqqiq al-Ḥillī, arguing that the primary concern for the jurist is the integrity of the transmission, whereas uprightness is only a condition for the acceptance of the transmission. So, for Kāzimī, since Twelvers accept transmission through a single transmitter, they cannot require more than one person to verify that transmitter's uprightness, because doing so would mean giving more importance to the condition of being upright rather than the issue of transmission.

In explaining al-Shaykh al-Bahā'ī's first argument, Kāzimī provides the reasoning behind it through a dialogue with an imagined interlocutor in which he uses logical reasoning to make his case. First, he has his interlocutor argue that there are cases in which precaution in an ancillary issue can exceed the precaution in a primary issue – as in the sighting of the moon of Ramadan – which is accepted with a single witness according to some scholars, whereas *tazkiya* requires two witnesses. Kāzimī states that the stipulation of a single witness sighting the moon does not relate to this issue of *tazkiya* because sighting the moon by a single person has basis in a specific textual proof (and therefore cannot be generalised). Furthermore, because one cannot accept the transmission of one upright person approved by two upright people while at the same time rejecting the *tazkiya* of an upright person by two upright people, Kāzimī argues that it is a contradiction. Thus, precaution in an ancillary issue – i.e. the *tazkiya* – cannot exceed the precaution in a primary issue – i.e. the transmission.

In clarifying al-Shaykh al-Bahā'ī's second argument, Kāzimī then points out that there is a text-proof in the "Reliability Verse"³² for the acceptance of the report of a single, upright transmitter in all aspects including narration, *tazkiya*, and testimony but that testimony is exempted

تزكية⁹⁴ عدل واحد زكاه عدلان،⁹⁵ وحينئذ⁹⁶ فلزوم⁹⁷ زيادة الاحتياط في الفرع على الأصل ظاهر. الثاني قوله تعالى: ﴿إِنْ جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا﴾⁹⁸ - الآية - دلّ على قبول خبر الواحد العدل مطلقاً شهادةً وروايةً وتزكيةً. خولف في الشهادة بخصوص نص أخرجها عن ذلك العموم فيبقى معمولاً به في ما عداه⁹⁹ ومن جملة ذلك التزكية، فيكون قول العدل الواحد مقبولا فيها. وفي الدليلين بحث:¹⁰⁰

أمّا الأول فلأن الاستدلال به وإن كان مشهوراً بين أصحابنا المتأخرين - رضوان الله عليهم أجمعين - إلا أنه لا يخفى ضعفه، فإن القول بعدم زيادة الفرع على الأصل ليس بيناً ولا ميبناً بدليل معتبر يستند إليه في ذلك. وقد يستفاد من كلام بعض العامة أن الاكتفاء بتزكية الواحد هو مقتضى القياس¹⁰¹ ويجوز أن يكون هو الوجه في ذلك فالظاهر¹⁰² عدم اعتباره عندنا. وقول الأستاذ المصنف أنه قياس الأولوية¹⁰³ غير ظاهر. سلمنا لكن المشروط هو قبول الرواية، والشرط هو العدالة، والمشروط على هذا التقدير لا يكفي فيه الواحد ليلزم مثله في الأخبار بالشرط الذي هو العدالة، بل الذي يكفي فيه الواحد هو نفس الرواية والعدالة ليست شرطاً لها¹⁰⁴ والتزكية طريق المعرفة بالعدالة والطريق إلى معرفة الشرط¹⁰⁵ لا يسمى¹⁰⁶ شرطاً.

وأمّا الثاني فلأنّ الفسق إذا كان علة التثبت وجب العلم بنفيه حتى ينتفي التثبت، وحينئذ فيتوقف قبول الخبر على العلم بانتفاء صفة الفسق عن المخبر بذلك الخبر. والظاهر أن العلم بذلك موقوف على اتصافه بالعدالة. إذا عرفت هذا فلو كانت الآية عامّة بحيث تشمل التزكية أيضاً لزم التناقض في مدلولها من حيث أن الاكتفاء¹⁰⁷ في¹⁰⁸ معرفة العدالة بخبر الواحد يقتضي عدم توقف قبول الخبر على العلم بانتفاء صفة الفسق عن المخبر به¹⁰⁹ ضرورة أن خبر العدل بمجرد لا يوجب العلم، وقد كان مقتضى الآية توقف القبول على العلم بالانتفاء، وهو تناقض ظاهر فلا بد من حملها على ما سوى التزكية من الأخبار. فإن قيل هذا وارد في تزكية العدلين إذ لا علم معه. قلنا مقتضى الآية توقف القبول على العلم ويجوز تخصيص ذلك بدليل من¹¹⁰ خارج ولا محذور في ذلك، بخلاف تزكية الواحد

94 تزكية تزكية: M2.

95 أي لا يقبل إلا تزكية: In the marginal note of M: أي لا يقبل إلا تزكية: عدلين للراوي

96 Missing in M2.

97 M2: فلزم

98 Qur'an 49:6.

99 Missing in M2.

100 In marginal note of M:

سلمنا، ولكن الشرط في قبول الرواية هو العدالة لا التعديل. نعم، هو أي التعديل أحد الطرق إلى المعرفة بالشرط أعني العدالة. وأقول: التعديل إثبات العدالة فإذا زيد في إثبات العدالة على إثبات الرواية يلزم زيادة الشرط على المشروط. هذا مأخوذ من كلام الطبرسي، وهو أصح من توجيه المصنف جواد، إذ لا معنى لقوله لا يكفي في قبول الرواية الواحد، إذ كل من قال بقبول الخبر الواحد لم يشترط فيها الزيادة على واحد، وأيضاً لا معنى للاكتفاء بواحد في نفس

الرواية دون قبولها إذ كفاية الواحد فيها هو عين قبولها. فإن اكتفى فيه بواحد فليكتف في قبولها بواحد أيضاً. ع ل

101 أي قياس التزكية على: In the marginal note of M: أي قياس التزكية على: الرواية، فكما يكفي في الرواية بعدل واحد فكذلك يكفي في التزكية.

102 فظ

103 In the marginal note of M: فكما يكفي في الرواية عدل واحد، فبالطريق الأولى يكفي في التزكية.

104 In M this is in the marginal note; M2: فيها

105 M2: الشيء

106 M: تسمى

107 M2: طريق الاكتفاء

108 M2: إلى

109 Missing in M2.

110 Missing in M2.

from this rule by another textual proof³³ requiring two witnesses. Therefore, anything other than testimony may be accepted through a single upright person.

Kāzīmī then presents the potential limitations of al-Shaykh al-Bahā'ī's two arguments, the first of which he dismisses, and the second of which he partially concedes to. As for the first argument: Kāzīmī states that the argument of extra precaution in verifying the uprightness of transmitters, although accepted among the later Twelver scholars, is weak, not self-evident, and has no strong evidence to support it. Al-Shaykh al-Bahā'ī argues that *tazkiya* by a single upright person is acceptable based on *qiyās al-awlawiyya* (a *fortiori* argument), which Kāzīmī dismisses as invalid. For him, *tazkiya* is merely the means by which one determines uprightness, and since the method of determining the condition (uprightness) cannot be a condition itself, the analogy thus does not apply.

As for the second argument that anything other than testimony may be accepted through a single upright Twelver, including *tazkiya*: Kāzīmī clarifies that the "Reliability Verse," which he had earlier argued was a proof-text for needing only one person for *tazkiya*, may in fact be inapplicable to *tazkiya*. He explains that one would only need to obtain corroboration of a report of an individual who is *fāsiq*; conversely, one does not need to obtain corroboration of a report from a transmitter who is not accused of *fiṣq*, which is typically determined through information stating that a transmitter is upright. Thus, for Kāzīmī, it is obvious that determination of the lack of *fiṣq* is conditional on knowledge of the transmitter's uprightness. Kāzīmī acknowledges that if the "Reliability Verse" were to apply universally to include *tazkiya*, then it would create a contradiction, because then the requirement would be to verify that a transmitter is not a *fāsiq* rather than verifying his report. Therefore, the verse must be understood to refer to reports other than *tazkiya*. Kāzīmī says that if his interlocutor were to argue that the *tazkiya* of two persons does not give "certain" knowledge either, then one must acknowledge that the point of the "Reliability Verse" is to make the acceptance of a report conditional on knowing the transmitter's lack of *fiṣq*. The acceptance of the report in this way, via Qur'anic verse, can thus only be limited by another textual proof. For this reason, Kāzīmī argues, a single upright witness to a transmitter's trustworthiness is sufficient because the witness provides probable knowledge (*ẓānn*) that the transmitter is more trustworthy than not. In this case, it is best to accept the narration of such a transmitter, because, as Kāzīmī argues, there is more harm in the discarding of a report that is likely to be true than there is in retaining it. However, in the case of the report of a *fāsiq*, probable knowledge is reversed, i.e. the possibility of falsehood is higher than the possibility of truthfulness in the report, which means that there would be greater harm in accepting the report than discarding it. Therefore, God (the "*Shāri'*") has relieved the community of believers from accepting the report of a *fāsiq* at face value by asking them to verify it.

فإنها على ذلك التقدير تؤخذ من الآية فيجئ المحذور السابق كذا قيل. وأقول ظاهر¹¹¹ الآية وجوب التثبت¹¹² عند خبر من ثبت له هذه الصفة، فهي نفسها علة في التثبت¹¹³ فلا بد من العلم بانتفاءها أو ما يقوم مقامه كالظن، فلا يتم ما ذكره.

ويمكن الاستدلال على الاكتفاء بالواحد في التزكية بأن يقال¹¹⁴ لما¹¹⁵ كان خبر العدل يفيد ظن الصدق فلو أخبرنا عدل بعدالة شخص حصل لنا ظن صدقه بحيث لو أخبرنا بخبر كان الصدق راجحاً والكذب مرجوحاً، ولا ريب أنه يحصل لنا بخالفة الراجح وعدم العمل بمقتضاه ظن الضرر ودفع الضرر المظنون واجب كما بين في محله. فإن قيل يرد عليكم خبر الفاسق، قلنا قد أسقط عنا الشارع العمل بالظن الحاصل من خبر الفاسق وأوجب التثبت¹¹⁶ كما دلت عليه الآية فلم يحصل لنا ظن الضرر بخالفة خبره، بل نحن آمنون به¹¹⁷ بل الضرر بقبول خبره فلا يكون الدليل متناولاً له¹¹⁸ كما لا يخفى. وإنما قيد المصنف العدل بكونه إمامياً لأن غيره لا اعتبار بتزكيته كما لا اعتبار بجرحه. وقد يفهم من المصنف في بعض تحقیقاته أن تزكية غير الإمامي إذا كان عدلاً لمن هو إمامي على حد الاعتبار والاعتماد بناء على أن الفضل ما شهدت به الأعداء، وأما الجرح فلا عبرة به إذا كان عن¹¹⁹ غير إمامي، ولا يخفى عليك أنه كلام خطابي لا دليل عليه يوجب الاستناد إليه. وكأن في التصريح بقيد الإمامي هنا استعاراً بعدم الالتفات إلى ذلك. استدلال القائل بالتعدد في التزكية بأن التزكية شهادة، والشهادة لا يكفي فيها الواحد. والجواب منع الصغرى، فإنها غير بينة ولا مبينة ولم لا كانت¹²⁰ التزكية كأغلب الأخبار في أنها ليست شهادة كالرواية؟ فإنها خبر وليست بشهادة¹²¹ وكنقل الإجماع، وتفسير مترجم القاضي، وكأخبار الطيب بإضرار الصوم للمريض، وكأخبار الأمير بإيقاع الحج، وكأخبار العارف بالقبلة لجاهل العلامات،¹²² ونحو ذلك مما لا يخفى. سلمنا ذلك، لكن نمنع أن الشهادة مطلقاً لا يكفي فيها الواحد، فإن شهادة العدل الواحد بالهلال مقبولة عند بعض علمائنا بل شهادة المرأة الواحدة في ربع ميراث المستهل.¹²³ فاندفع كلية الكبرى أيضاً. هذا وقد استدلل بأن اعتبار التعدد أحوط للتعبدية عن احتمال العمل بما ليس بحديث. والجواب المعارضة بأن اعتبار عدم التعدد أحوط للتعبدية عن احتمال عدم العمل بما هو حديث المستلزم لتضييع أوامره تعالى ونواهيه كما لا يخفى.

[b.2] قال مد ظله: وإذا¹²⁴ تعارض الجرح والمعدل ولم ينحصر نفيه رجح الجرح ومعه الأكثر الأورع والقول بالإطلاق متجه.

أقول: إذا اجتمع في واحد جرح وتعديل¹²⁵ فلا يخلو إما أن ينحصر نفي المعدل في جرح الجرح أو يطلق،

111 Missing in M. M2: الظاهر من الآية

112 M and H: التثبت

113 M and H: التثبت

114 In H تقول

115 missing in M2. يقال لما بأن

116 M and H: التثبت

117 M2: منه

118 Missing in M2.

119 Missing in M2.

120 M2: تكون

121 M2: شهادة

122 M2: الجاهل العلامات

123 In the marginal note of M: رفع استهل الصبي أي رفع
النساء؟ In M2: صوته عند الولادة

124 In H فإذا

125 In the marginal note of M: اختلفوا في قبول الجرح
والتعديل مجردين عن ذكر السبب فقال القاضي أبو بكر: يكفي
الإطلاق فيهما ولا حاجة إلى ذكر السبب وقال قوم لا

Kāzīmī points out that al-Shaykh al-Bahā'ī stated that a witness to the trustworthiness of a transmitter must be an upright Twelver (*Imāmī*) in order for his testimony to be accepted by default, and that al-Shaykh al-Bahā'ī had mentioned elsewhere (*fī ba'd taḥqīqātihī*) that the Twelver jurists did not concern themselves with non-Twelvers attesting to the uprightness of a Twelver transmitter. However, a positive appraisal by one of their opponents would be accepted, with the reasoning that an opponent's *tazkiya* would be all the more reliable since it was not self-serving. Kāzīmī does not find this line of thinking convincing, referring to it as rhetorical discourse (*kalām khiṭābī*) rather than proper reasoning.

Kāzīmī then reiterates that reports do not fall under the same conditions of requiring two upright persons as testimony does, giving the same examples as those of al-Shaykh al-Bahā'ī, with some modifications, where one witness is accepted as sufficient. Kāzīmī is careful to note, however, that even though the testimony of a single female adult witness is accepted regarding the live birth of a baby and its effect on the mother's inheritance (*fī rub' al-mustahill*), one cannot generalise about testimony based on this specific case. The essential rule is that testimony (*shahāda*) is not commensurate with appraisal (*tazkiya*). One may argue that requesting more than one witness is a better precaution rather than acting upon a report that may not be valid. Kāzīmī, however, argues that this reasoning is invalid because it may lead to the neglect of God's commands and prohibitions.

[b.2] Kāzīmī's commentary on this section is concerned with what to do when there are two conflicting opinions on whether a transmitter of a solitary report is upright or not. When it is not clear that one opinion has more evidence than the other to support it, Kāzīmī's treatment of the issue becomes more complex. Rather than having two equally contradictory appraisals simply revoke each other, Kāzīmī frames the relationship between criticism and approval as forms of specific and general knowledge. While a *mu'addil* can only attest to knowing that the transmitter was in a general state of uprightness, he cannot claim to know that the transmitter never committed an act of *fiṣq*, since it is not humanly possible to have knowledge of all things at all times. A *mu'addil*'s attestations of trustworthiness is therefore always general knowledge at best. A *jāriḥ*, however, needs only to point to a specific instance of *fiṣq* in order to discredit the transmitter; therefore, his knowledge is specific by definition. Thus, the *jāriḥ*'s opinion is preferred in instances of stalemate. However, this does not mean that the *mu'addil*'s opinion is completely disregarded in relation to appraisals of transmitters or even the transmitter in question; rather, it only means that the *mu'addil* reported what he knew to be true, however limited it may have been. In instances where the *mu'addils* are found to be higher in number or more scrupulous (*akthar aw awra'*), then their opinion is preferred. In order to illustrate this concept, Kāzīmī gives the example of a *jāriḥ* who stated that he saw a certain transmitter drink wine at the time of the Friday communal prayer, whereas a *mu'addil* attested that the transmitter was in fact praying during that time. If there is no further evidence to break the stalemate, then preference is given to which one of the two appraisers is more pious, or known to be more accurate in recollection (*akthar ḍabṭan*), or to whichever of the *mu'addils* or *jāriḥs* were more numerous. However, if there is no deciding factor (*murajjih*), one must abstain from making a judgment. Kāzīmī summarises his typology into four categories based on whether the *ta'dil* or *jarḥ* is specific or general.

فإن أطلق المعدل كما لو قال بعدالته مطلقا وذكر الجرح سببا في الجرح قدم قول الجرح مطلقا، سوى إن¹²⁶ زاد المعدل على الجرح أو ساواه، لأن الجمع بين قولي عدلين لا يكون إلا بذلك. إذ غاية قول المعدل عدم العلم بنفسه والإخبار عن ظاهر حاله لا العلم بالعدم. إذ لو قال ذلك لرد قوله لأنه حينئذ شهادة على النفي والجرح يخبر عن إطلاعه على أمر خفي على المعدل لانه لا يعتبر في المعدل ملازمته في جميع الأحوال فلعله¹²⁷ ارتكب الموجب للجرح في بعض الأحوال التي فارقة المعدل فيها.¹²⁸ وحينئذ فالعمل بقول الجرح لا ينفي مقتضى التعديل، فتقديم الجرح يكون جمعا بينهما فهو أولى وبالاعتبار أخرى. وقيل بالتفصيل فإن كان المعدل أكثر أو أروع قدم قوله، وإلا فالجرح. وإن انحصر نفي المعدل في الجرح كما لو قال الجرح إنه شرب الخمر ظهر الجمعة وقال المعدل كان يصلي ذلك الوقت فهما يتعارضان من غير إمكان الجمع بينهما ويجب الترجيح إن كان هناك مرجح بأن يكون أحدهما أروع، أو أكثر ضبطا، أو عددا، أو نحو ذلك فيعمل بالراجح ويترك المرجوح، وإن لم يكن هناك مرجح وجب التوقف للتعارض واستحالة الترجيح من غير مرجح. فهنا صور أربع:

الانحصار في نفي الجرح، وله صورتان: إحداهما تساوي الجرح والمعدل من جميع الصفات، وحينئذ يجب التوقف. الثانية اختلافهما، فيقدم الراجح بالأكثرية أو الأورعية أو نحوهما. وعدم الانحصار، له صورتان أيضا: إحداهما التساوي، كما ذكر وتقدم الجرح هنا بالإجماع. الثانية الاختلاف، فالمشهور تقديم الجرح أيضا. وقيل يقدم المعدل إذا كان راجحا بإحدى الصفات المذكورة. ويظهر من كلام الأستاذ المصنف هنا الميل إليه كما قال والإطلاق متجه أي إطلاق القول بتقديم الأكثر الأروع وإن لم يكن النفي منحصرا متجه. وقد فعله العلامة في الخلاصة كثيرا،¹²⁹ فإن إبراهيم بن سليمان قد جرحه الغضائري وعدله الشيخ، والنجاشي، والعلامة رجع قولهما على قوله وإن كان لتقديم قولهما وجه ذكرناه في غير هذا الموضع لكن العلامة في النهاية¹³⁰ جزم بتقديم قول الجرح في صورة عدم الانحصار وإن كان المعدل أكثر لأن وجه تقديم الجرح احتمال اطلاعه على ما لم يطلع عليه المعدل، وهذا لا يرتفع بزيادة عدد المعدل. هذا وإطلاق تقديم الجرح في القسم الأول¹³¹ غير جيد فإن من صورة¹³² الجرح بما لا يخفى على المعدل. والظاهر التعارض على ذلك التقدير مثلا إذا جرح الشيخ الطوسي¹³³ بجرح ظاهر وأطلق النجاشي التوثيق فإنه يبعد القول بخفاء¹³⁴ مثل ذلك الجرح على النجاشي لكثرة إطلاعه على أحوال الرجال. وقد يفهم من بعض الأصحاب تقديم قول النجاشي وطرح قول الشيخ في هذه الصورة وفيه بعد. والحق النظر إلى مستندها فإن وجد مرجح عمل بمقتضى الترجيح ولا يقدم الجرح على التعديل من غير مرجح، إذ هما متساويان لتساوي مستندهما في الظهور.

يكفي الإطلاق فهما بل يجب ذكر السبب وقال الشافعي:
يكفي في التعديل دون الجرح وقيل بالعكس.

126 Missing in M2 and H.

127 Missing in M2.

128 فلعله ارتكب الموجب للجرح في بعض الأحوال التي فارقة
missing in M2. المعدل فيها

129 خلاصة الأقوال ص 50

نهاية الوصول ج 3 ص 432

131 In the marginal note of M: وهو عدم انحصار قول
المعدل في نفي جرح الجرح

132 صور: M2:

133 Missing in M2.

134 خطأ: H:

In cases where the *jāriḥ* makes a specific criticism that the *mu'addil* rejects in his assessment:

- When the *jāriḥs* and *mu'addils* are equal in terms of uprightness and accuracy, one must abstain from making a judgment regarding the transmitter in question.
- When the *jāriḥs* and *mu'addils* differ in number or scrupulousness, one must abide by the opinion of the group higher in number or more scrupulous.

In cases where both the *jarḥ* and the *ta'dil* are general:

- When the *jāriḥs* and *mu'addils* are equal in number and scrupulousness, one must abide by the opinion of the *jāriḥs* – this is a rule by scholarly consensus (*ijmā'*).
- When the *jāriḥs* and *mu'addils* differ in number or scrupulousness, the widely-accepted scholarly opinion is to accept the *jāriḥ's* assessment. However, others have said that the *mu'addils* may be preferred if they are higher in number or scrupulousness.

Kāẓimī notes that al-Shaykh al-Bahā'ī and al-ʿAllāma al-Ḥillī applied this reasoning quite often. Citing a case where the transmitter Ibrāhīm b. Sulaymān was considered trustworthy by al-Shaykh al-Ṭūsī and al-Najāshī (d. c. 450/1058), whereas their contemporary al-Ghaḍā'irī (d. before 450/1058) discredited him, Kāẓimī notes that al-ʿAllāma al-Ḥillī in *al-Khulāṣa*³⁴ had preferred the opinion of al-Shaykh al-Ṭūsī and al-Najāshī over that of al-Ghaḍā'irī. However, Kāẓimī notes that in *al-Nihāya*,³⁵ al-ʿAllāma al-Ḥillī decisively preferred the opinion of the *jāriḥ* even if the *mu'addils* were greater in number, because the nature of knowledge of *fiṣq* – its specificity – cannot be affected by the number of *mu'addils*.

However, Kāẓimī gives another hypothetical example of a transmitter discredited by al-Shaykh al-Ṭūsī, for instance, due to an abhorrent act that would have been too obvious to have been missed by someone like al-Najāshī, with his vast knowledge of transmitters and their backgrounds. In this hypothetical example, al-Najāshī happens to approve of the transmitter in question. Kāẓimī points out that some scholars would prefer al-Najāshī's opinion over al-Ṭūsī, but Kāẓimī rejects preferring al-Najāshī's opinions as a general rule. Instead, Kāẓimī argues that the correct position is to weigh the evidence or to abstain from judgment until a deciding factor is found, because one must not accept the opinion of a *jāriḥ* or *mu'addil* without a sound deciding factor.

Endnotes

- 1 For biographical details of his life and works see al-Ḥurr al-ʿĀmilī, *Amal al-ʿāmil* (Qum, 1362Sh/1984), v. 2, pp. 57–58 #149; al-Afandī, *Riyāq al-ʿulamā'* (Beirut, 1431/2009), v. 1, pp. 118–119 (the editions of both these biographical dictionaries have recorded the name of his father as Sa'īd. Al-Afandī adds that though he is famous by the name al-Jawād his original name was Muḥammad); al-Khwānsārī, *Rawḍāt al-jannāt* (Qum: Ismā'īliyyān, 1390/1970), v. 2, pp. 215–216 #178; al-ʿĀmilī, *A'yān al-Shi'a* (Beirut, 1403/1983), v. 4, p. 271; al-Qummi, *al-Kunā wa-l-alqāb* (Tehran, 1397/1976), v. 3, pp. 9–10; al-Ṣadr, *Takmilat Amal al-ʿāmil* (Beirut, 1429/2008), v. 2, pp. 300–303 #305; Subḥānī et al., *Mawsū'at tabaqāt al-fuqḥā'* (Qum, 1420/1999), v. 11, pp. 63–64 #3352; al-Mar'ashī al-Najafī, *Manhaj al-rashād fī tarjumat al-Fāḍil al-Jawād*, v. 1, pp. 14–18 (this is a succinct dedicated treatise on the biography of Kāẓimī).
- 2 On al-Shaykh al-Bahā'ī see Stewart, “The Lost Biography of Baha' al-Din al-ʿĀmilī and the Reign of Shah Isma'il II in Safavid Historiography,” *Iranian Studies* 31/2 (1998), pp. 177–205; Stewart, “A Biographical Notice on Bahā' al-Dīn al-ʿĀmilī (d. 1030/1621),” *JAOS* 111 (1999), pp. 568–571.
- 3 The *Shaykh al-Islām* of a city was its chief religious authority who was responsible, among others duties, for the judgeship. This was a state appointed post. See Arjomand, *The Shadow of God and the Hidden*

- Imam* (Chicago: University of Chicago Press, 1984), pp. 124, 137; Stewart, "The First Shaykh al-Islām of the Safavid Capital Qazvin," *JAOS* 116 (1996), p. 387.
- 4 Stewart, "A Biographical Notice on Bahā' al-Dīn al-Āmilī (d. 1030/1621)," p. 571.
 - 5 Al-Āmilī, *A'yān al-Shi'a*, v. 4, p. 271.
 - 6 Al-Mar'ashī al-Najafī, *Manhaj al-rashād fi tarjumat al-Fāḍil al-Jawād*, pp. 16–17.
 - 7 Al-Ṣadr has recorded a different title: *Sharḥ al-ṣaḥīfa al-uṣṭurlābiyya*. See al-Ṣadr, *Takmilat Amal al-āmīl*, v. 2, p. 301 #5.
 - 8 For the details of this MS see the editor's introduction in al-Sharīf al-Murtaḍā, *al-Dharī'a ilā uṣūl al-sharī'a* (Mashhad, 1399Sh/2020), p. 134.
 - 9 This is arguably Kāzīmī's most important work. It is edited and published in 4 volumes. See al-Kāzīmī, *Masālik al-afḥām ilā āyāt al-aḥkām* (Tehran, 1365Sh/1986).
 - 10 Bahā' al-Dīn al-Āmilī, *Zubdat al-uṣūl ma'a ḥawāshī l-muṣannif 'alayhā* (Qum, 1425/2004), pp. 44–46 (editor's introduction). It appears that the list of commentaries contains a repetition and therefore the total will reach to 27 commentaries.
 - 11 Al-Khwānsārī, *Rawḍāt al-jannāt*, v. 2, p. 216; Āghā Buzurg al-Ṭihirānī, *al-Dharī'a ilā taṣānīf al-Shi'a* (Beirut, 1403/1983), v. 16, p. 15 #61. It should be noted that his rival scholar Ṭalībān of Astarābād is also credited with a commentary on the *Zubdat al-uṣūl*.
 - 12 Al-Āmilī, *A'yān al-Shi'a*, v. 9, p. 244.
 - 13 Dirāyatī, *Fihristegān-e nuskeḥā-ye khaṭṭi-ye Irān* (Tehran, 1390Sh/2012), v. 23, pp. 305–312; Naṣrābādī, *Ketābshināsi-ye Shaykh Bahā'ī* (Mashhad, 1387Sh/2008), pp. 379–381 (73 MSs). This is also attested by Āghā Buzurg al-Ṭihirānī, *al-Dharī'a*, v. 16, p. 15 when he states that the MSs of *Ghāyat al-ma'mūl* are numerous and widely disseminated (*kathīra shāyi'a*).
 - 14 The *Ghāyat al-ma'mūl* has been subject of research at the postgraduate degree level at Al-Azhar University. Between 2010 and 2011, three students selected different sections of the *Ghāyat al-ma'mūl* for their dissertations. See 'Alī 'Amr 'Abd al-Laṭīf 'Alī, *Ghāyat al-ma'mūl fi sharḥ Zubdat al-uṣūl "taḥqīq wa-dirāsa" lil-'Allāma Muḥammad b. Sa'd al-shahīr bi-l-Jawād al-Kāzīmī min awwal al-makhtūṭ ilā ākhir al-kalām 'an al-mabādī al-lughawiyya* (MA dissertation, Al-Azhar University, 2010), 604 pages; 'Abd al-Raḥmān Muḥammad As'ad Muḥammad, *Tahqīq wa-dirāsa makhtūṭ Ghāyat al-ma'mūl fi sharḥ Zubdat al-uṣūl (min awwal al-mabādī al-aḥkāmīyya ilā ākhir mabath al-qiyās) lil-'Allāma Muḥammad b. Sa'd al-shahīr bi-l-Jawād al-Kāzīmī* (MA dissertation, Al-Azhar University, 2011), 621 pages; Muḥammad Fārūq Muḥammad 'Abd al-Muḥsin, *Tahqīq wa-dirāsa makhtūṭ (Ghāyat al-ma'mūl fi sharḥ Zubdat al-uṣūl) lil-'Allāma Muḥammad b. Sa'd al-shahīr bi-l-Jawād al-Kāzīmī min bidāyat (mabāḥiṭh al-awāmir wa-l-nawāhi) ilā nihāyat (mabāḥiṭh al-tarjīḥ) wa-huwa ākhir ajzā' al-makhtūṭ* (MA dissertation, Al-Azhar University, 2011), 618 pages. For biographical details, see (accessed 11 August 2021): <http://www.azhar.edu.eg/central-lib/ar-eg/الرسائل-العلمية/الرسائل-العربية/كليات-الشريعة-والقانون>
 - 15 'Abdallāh b. Bukayr, a student and narrator of traditions from Abū Baṣīr Layth b. al-Bakhtārī al-Murādī. Abū Baṣīr al-Murādī was a Twelver hadith transmitter; because chains of transmission only listed the *kunya* Abū Baṣīr, it was often unclear whether it was in reference to him or Abū Baṣīr Yaḥyā b. Abī l-Qāsim al-Asadī, another transmitter, since both were disciples of the Imams Muḥammad al-Bāqir and Ja'far al-Ṣādiq, and lived in Kufa around the same time. As a result, the identity of Abū Baṣīr in a chain of transmission cannot be determined with certainty (Pakatchi, tr. Hamid Tehrani, "Abū Baṣīr," *EIS*).
 - 16 Samā'a b. Mihrān b. 'Abd al-Raḥmān, a prolific Kufan author and transmitter from Ja'far al-Ṣādiq, Mūsā al-Kāzīm, and their disciples; "there are close to one thousand quotations from this author in Shi'ite works...mainly through the same transmitter." See Modarressi, *Traditional and Survival* (Oxford, 2003), p. 370.
 - 17 A reference to the followers of Ibn Faḍḍāl, who was a "renowned" scholar of *rijāl*, the biographies of transmitters, and a member of the Faṭḥiyya; Abū Baṣīr al-Murādī's only attributed work, on juridical issues, is known mainly through Ibn Faḍḍāl's transmission. See Pakatchi, "Abū Baṣīr".
 - 18 Qur'an 49:6.

- 19 Abān b. ʿUthmān al-Aḥmar, a transmitter of hadith from Abū Baṣīr al-Asadī. See Pakatchi, “Abū Baṣīr”.
- 20 Bahāʾ al-Dīn al-ʿĀmilī, *Mashriq al-shamsayn wa-iḥsār al-saʿādātayn* (Mashhad, 1429/2008), pp. 43–45.
- 21 Qurʾan 49:6.
- 22 The Faṭḥiyya were Shiʿis who believed that the rightful Imam after Jaʿfar al-Ṣādiq was his son ʿAbdallāh al-Aṭṭah rather than his other son, Mūsā al-Kāzim, who the Twelver Shiʿis regard as the sole legitimate successor. See Pakatchi, “Abū Baṣīr”.
- 23 Al-Muḥaqqiq al-Ḥillī, *Maʿārij al-uṣūl* (London, 2003), p. 216.
- 24 Shiʿis who believed that Jaʿfar al-Ṣādiq did not die and would return as the Mahdī (Eds., “Nāwūsiyya,” *EI2*).
- 25 Shiʿis who believed the line of Imams stopped with Mūsā al-Kāzim, whom they believed did not die and would one day return as the Mahdī. See Khani, tr. Farzin Neqahban, “Bashiriyya,” *EIS*.
- 26 Al-Ṭūsī, *Uddat al-uṣūl* (Qum, 1417/1997), vol. 1, pp. 148–150.
- 27 Al-Muḥaqqiq al-Ḥillī, *Maʿārij al-uṣūl*, p. 215.
- 28 Al-ʿAllāma al-Ḥillī, *Khulāṣat al-aqwāl fī maʿrifat al-rijāl* (Qum, 1417/1996), p. 74.
- 29 Qurʾan 29:69.
- 30 Al-Muḥaqqiq al-Ḥillī, *Maʿārij al-uṣūl*, p. 218.
- 31 Al-Jubāʿī al-ʿĀmilī al-Shahīd al-Thānī, *al-Riʿāya fī ʿilm al-dirāya* (Qum, 1408/1988), p. 186.
- 32 Qurʾan 49:6.
- 33 Qurʾan 2:282.
- 34 Al-ʿAllāma al-Ḥillī, *Khulāṣat al-aqwāl*, p. 50.
- 35 Al-ʿAllāma al-Ḥillī, *Nihāyat al-wuṣūl ilā ʿilm al-uṣūl* (Qum, 1427/2006), vol. 3, p. 432.

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CHAPTER 5

Debating the Epistemic Value of Hadith: A Chapter from the *Fath al-bāb ilā l-ḥaqq wa-l-ṣawāb* of Mīrẓā Muḥammad al-Akḥbārī (d. 1232/1817)

Kumail Rajani and Nebil Husayn

Introduction*

The chapter edited and summarised below is taken from the polemical treatise *Fath al-bāb ilā l-ḥaqq wa-l-ṣawāb* of Mīrẓā Muḥammad b. ‘Abd al-Nabī al-Nīsābūrī al-Khurāsānī (d. 1232/1817, hereon Mīrẓā Muḥammad). Mīrẓā Muḥammad was an ardent supporter of Akḥbārī school of Imāmī Twelver jurisprudence, and hence he is widely referred to as simply Mīrẓā Muḥammad al-Akḥbārī. From the biographical notices, and from his own writings, he appears to have been a highly combative debater, writing treatises in refutation of his opponents. There are refutations of his Twelver Shī‘i opponents (of Uṣūlī and Shaykhī tendencies), of Sunni theological schools (Ash‘arī and Wahhābī) and of other religions (Judaism, Christianity, Zoroastrianism and Hinduism). Some of these are records of actual, public debates in which he challenged his opponent; other refutations are literary in character, refuting both the general doctrines and specific works of these various groups. Most of his oeuvre are detailed, often strident arguments against his opponents – he rarely embarks on expositions of his own views without this polemic edge. The passage from the *Fath al-bāb* edited below is, then, typical of his writings more generally.

Mīrẓā Muḥammad led an extraordinary life.¹ He was born in India, though the biographical accounts differ as to the location; he records his own birth year in an autobiographical notice as 1178/1765² in his own (unpublished) biographical dictionary *Ṣaḥīfat al-ṣafā*. He certainly studied in Agra (known as Akbarābād under the Moghuls) and may also have been born there. From there he acquired al-Akbarābādī as one of his *nisbas*; his father was from Nīsābūr (Nishapour) in Khurāsān, and hence he gains other *nisbas* – al-Khurāsānī al-Nīsābūrī. By his own account, at age 20 he left India with his parents to perform the pilgrimage to Meccas and Medina. On the return journey, in 1199/1784, the party reached Muscat, where his father died; three days later, his mother died also. This event changed his life direction, as he decided to bury his parents in Najaf. He stayed in Najaf, studying at the seminary there: he was, at first, a supporter of the Uṣūlī school; but quickly “converted” to Akḥbārism. He travelled between the shrine cities of Najaf and Karbala, spending time also in Hilla for some years, until in or around the year 1211/1796 when he relocates to Iran. For the next 20 years or so, Mīrẓā Muḥammad spent time travelling between Iraq and Iran, basing himself in a city for a while, but eventually moving on (often having to leave following a controversy). During these years he ingratiates himself to the Iranian monarch Fath ‘Alī Shāh, who maintained an interest in the various religious movements, including Akḥbārism, active during his reign. Fath ‘Alī Shāh’s power in the north of Iran was under constant threat from Russian forces, and this broke out into war between 1804 and 1813. Mīrẓā Muḥam-

* The introduction of this chapter is written by Robert Gleave.

mad, on some accounts, brought about, by supernatural means, the death of the Russian general Tsitsianov in 1806. This established him in the Shah's favour, but also led to religious rivalry. He had an on-going series of debates and confrontations with the leading *mujtahid* of the day, al-Shaykh Ja'far Kāshif al-Ghiṭā' (d. 1228/1813). He left Iran in 1225/1810, settling in Kāzimayn – the Shi'i shrine just outside Baghdad. There he apparently gathered a significant following, engaging in debates, virulently criticising his Uṣūlī opponents and writing many treatises, books and commentaries. His confrontational activities, combined apparently with his irascible character, led very soon to opposition from both religious and political circles. There were fatwas from leading figures declaring his blood to be licit, and permitting his killing on the basis of spreading unbelief and "corruption on the earth". The most famous of these was a fatwa, requested by the *mujtahid* Muḥammad b. 'Alī al-Ṭabāṭabā'i (d. 1231/1816) from al-Shaykh Mūsā Kāshif al-Ghiṭā' (d. 1242/1825 or 1243/1827; the son of Mīrzā Muḥammad's long-term opponent, al-Shaykh Ja'far, mentioned above). The account is recorded by Muḥammad Ḥusayn Kāshif al-Ghiṭā' (d. 1373/1954), a descendant of al-Shaykh Mūsā, in *al-'Abaqāt al-'anbariyya*.³

Al-Sayyid [Muḥammad al-Mujāhid] wrote, in the form of a fatwa request from al-Shaykh [Mūsā] saying, "What does the Proof of God amongst his creation, and his security on earth, think about the man who agitates against the pious scholars, and tries by killing them to extinguish the light of religion?" Underneath this, [Mūsā] wrote: "It is obligatory on every devotee and person of wealth to expend his self and his wealth in killing him; and if he does not do so, then prayer and fasting is not valid for him; and thereby he would occupy his rightful place in hell."

Most likely as a result of this fatwa along with the other public condemnations of Mīrzā Muḥammad, his home was attacked by a mob on (according to some sources) 28 Rabī' I, 1232 (15th February 1817) in Kāzimayn and he was killed, along with his son Aḥmad and one of his students. He was buried in the Kāzimayn shrine, though his grave does not appear to have been marked perhaps for political and religious reasons.

His output, as mentioned before, is dominated by polemics and refutations. He wrote an enormous amount: over 200 titles are attributed to him ranging from short treatises to lengthy monographs and a Qur'an commentary (reaching 3 volumes in its printed form). His *Faṭḥ al-bāb ilā l-ḥaqq wa-l-ṣawāb* ("Opening the Door to the Truth and the Right") is a work of medium length.⁴ The work was written on the request of one of his pupils, identified only as 'Abd al-Ḥusayn. He clearly considers him a special pupil – even though it is customary to praise the dedicatee of a book, Mīrzā Muḥammad appears excessively laudatory in the introduction. This 'Abd al-Ḥusayn is recorded elsewhere as a recipient of an *ijāza* from Mīrzā Muḥammad.⁵ Unfortunately, no further identifying information on 'Abd al-Ḥusayn could be located amongst the records of Mīrzā Muḥammad's pupils. The colophon suggests that the author completed this work on the 1st Muḥarram 1210/18th July 1795 in Karbala. The work exists in numerous manuscripts, either with the title given here, or with the title *Faṭḥ al-bāb ilā ṭarīq al-ḥaqq wa-l-ṣawāb* ("Opening the Door to the Path of Truth and the Right") as given by Āghā Buzurg al-Ṭihirānī in his *al-Dharī'a*.⁶ The work is quite obviously written from an Akhbārī perspective against the Uṣūlī doctrine that the "door to knowledge is closed" (*insidād bāb al-'ilm*). By this, the Uṣūlīs meant that certainty as to the content and the sources (primarily the reports from the Imams, the *akhbār*) of the law is no longer available to the qualified jurist (i.e. the *mujtahid*). Given the state of the sources of legal knowledge available to the jurist, and furthermore, given the inherent uncertainty of any human

interpretation of those sources, the jurist is resigned to the fact that certainty is no longer available, and legal investigation occurs at the level of “informed opinion” (*ẓann*). Mīrẓā Muḥammad, along with the Akhhbārī school more generally, rejects this doctrine – and in the *Faṭḥ al-bāb*, he sets about demolishing the doctrine by demonstrating that all of the arguments the Uṣūlīs use to justify the loss of certainty are invalid. The section found in the edition below is the work’s introduction, followed by the first five arguments (*wujūh*) from the first of five sections (each called a *murshid* or “point of guidance”). As is shown below, in these arguments (which are in fact, counter-arguments to Uṣūlī arguments and presumptions), Mīrẓā Muḥammad aims to demonstrate that the disappearance of the Twelfth Imam (the *ghayba* doctrine) does not mean knowledge somehow is lost; the sources remain available, and these sources are not difficult to understand or deliberately evasive (due to the Imams’ dissimulation - *taqiyya*), as the Uṣūlīs claim. Rather, the reader today (during the Imam’s absence), in the same way as the one who heard the Imams when they were present, can be certain (i.e. have *‘ilm*) that the sources available (the *akhhbār*) not only come from the Imams, but that we can also understand them. The door to knowledge is not closed (the theory of *insidād bāb al-‘ilm*) but instead “open” (the theory of *infītāḥ bāb al-‘ilm*). In this argument, which Mīrẓā Muḥammad backs up with citations from the Qur’an and the *akhhbār* themselves, he demonstrates his thorough adherence to a basic Akhhbārī legal epistemology.

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[illegible]

Figure 5.2 MS Majlise Shūrā-ye Islāmī, Tehran (#8744), fols. 1b-2a

فتح الباب إلى الحق والصواب
الميرزا محمد بن عبد النبي النيسابوري الأخباري م 1232هـ

بسم الله الرحمن الرحيم وبه نستعين¹
هذا رسالة فتح الباب إلى الحق والصواب²

[1] نحمدك يا من فتح لنا أبواب نعمه الظاهرة والباطنة سرا وجهرا، وسد عنا أبواب نقمه البادية والخافية عذرا ونذرا، ولعن الذين قالوا: ﴿يَدُ اللَّهِ مَغْلُولَةٌ غُلَّتْ أَيْدِيهِمْ وَلُعِنُوا بِمَا قَالُوا﴾³، ونصلي على من به فتح الله وبه ختم وآله الطاهرين وصحبه المنتجبين قادة الأمم وعلى الذين تابعوهم وإليهم آلوا.

[2] أما⁴ بعد، فيقول العبيد⁵ الجاني أبو أحمد محمد بن عبد النبي النيسابوري الخراساني -عفى الله عن جرائمه:- إنه قد سألتني قرة عيني القريحة، ومهجة⁶ فؤادي، وأقصى غايي ومرادي، الصافي عن كل شين ومين، المتمسك بعروة الثقلين، الأملعي، اللوزعي، الزكي، عبد الحسين -نور الله تعالى بصر بصيرته وأصلح سيرته وسريته- أن أذكر له أدلة القائلين بانسداد باب العلم إلى مراد الله تعالى في التكليف الشرعية والأحكام الوضعية وما صار سبب حصول الشبهة لهم، وأبين ما يجاب به عن أدلتهم، ويدفع به عن شبهاتهم. فبادرت إلى القبول، وأسعفت المأمول فإنه ولدي الروحاني بل صنوى العقلاني -من الله عليه⁷ بنيل الآمال والأمان- فلينظر فيما سنح مع شدة لبال البال وزلزال الحال بعين الاستفادة والاسترشاد، وليسأل الله تعالى أن يمنّ عليه بالتوفيق والسداد. وسميته بفتح الباب إلى الحق والصواب مصليا على النبي وآله الأطياب وفيه مرأشد:

[3] المرشد الأول: في بيان قولهم بانسداد باب العلم في أزمنة الغيبة الكبرى لذهاب الأصول واختلاف الأفهام والعقول وزيادة الفضول، وأول من فتح لهم باب دعوى⁸ الانسداد الشهيد الثاني⁹ -طاب ثراه- في درايته وابنه صاحب المعالم¹⁰ -رحمه الله- في مقام الاعتذار لإحداث الاصطلاح الجديد لمعرفة أسانيد الأخبار، ولو أردنا إيراد عباراتهم في الاعتذار وما أُجيبوا به لخرجت الرسالة عن وضعها على الاختصار فنقول:

[4] إنا وإياكم يا معشر الإخوان كآ قائلين بفتح باب العلم والتكليف إلى زمن المرتضى الشريف،¹¹ بل لو زال التلبس إلى زمن ابن إدريس،¹² ثم إنكم خالفتُمونا في وضع الاصطلاحات وتمهيد أصول الاجتهادات، ومتى ما طالبناكم بالدليل وفصل الخطاب آوَيْتم إلى دعوى انسداد الباب. فوجب علينا وعليكم أن ننظر أولا فيما تزعمونه

1 Missing in B and D.

2 Missing in B and D.

3 5:64

4 B: وبعد

5 D: العبد

6 بهجة/مبهجة C:

7 A: عليّ

8 A: دعاوي

9 شرح البداية في علم الدراية، صص 29-30

10 منتقى الجمان في الأحاديث الصحاح والحسان، صص 2-3

11 الذريعة إلى أصول الشريعة، صص 517-562

12 السرائر، ج 1 ص 47

Commentary

God is the one who provides humanity with certainty (*al-ʿilm al-yaqīn*) of that which is true and false. Furthermore, our author, Muḥammad b. ʿAbd al-Nabī al-Nisābūrī al-Khurāsānī, famously known as Mīrẓā Muḥammad Akhbārī (d. 1232/1817), henceforth Mīrẓā Muḥammad, is certain that the teachings of the Prophet Muḥammad and the Twelve Imams represent the door to such divine guidance. For Akhbārīs, the key method of accepting such guidance is the acceptance of a large portion of Shiʿi hadith literature as authentic. Hadith engendered certainty on matters of sacred law (*sharīʿa*) for discerning scholars who understood how to interpret such literature. Uṣūlī scholarship, on the other hand, developed theories that acknowledged doubts about the authenticity and probativity of the Shiʿi hadith corpus in ways that Akhbārīs deemed as innovations in the Twelver Shiʿi tradition. For Uṣūlīs, most hadith did not engender certainty, but only uncertain knowledge (*al-ẓann*).

Mīrẓā Muḥammad’s treatise altogether consists of five chapters (*marāshid*). In this synopsis we consider the first five arguments (from a total of twelve) that appear in the first chapter. Mīrẓā Muḥammad’s central aim is to refute the claim that Shiʿa can no longer have certainty in legal matters in the time of occultation.

[1–2] Mīrẓā Muḥammad begins his treatise by explaining that he was prompted to write it after a certain student of his, ʿAbd al-Ḥusayn, urged him to elucidate the reasons for which Uṣūlī scholars came to consider Shiʿi hadith as constituting speculative proofs rather than evidence that engendered certainty.

[3–6] Mīrẓā Muḥammad argues that it was al-Shahīd al-Thānī (d. 965/1557 or 966/1558) and his son Ṣāhib al-Maʿālim (d. 1011/1602) who introduced ‘the theory of *insidād*’ that suggested an absence of definitive knowledge during the occultation of the twelfth Imam.⁷

Mīrẓā Muḥammad laments that Uṣūlīs followed their opinions without ever providing conclusive evidence proving such a theory. He frames their error as one that breaks from a previous consensus that existed among Twelver scholars that the teachings of the Imams were accessible and constituted a type of knowledge that engendered certainty. The door to certainty was open. However, Uṣūlīs closed this door sometime after the era of al-Sharīf al-Murtaḍā (d. 436/1044) and Ibn Idrīs al-Ḥilli (d. c. 598/1201).⁸ It is with this framework in mind that the author entitles his treatise *Faṭḥ al-bāb ilā l-ḥaqq wa-l-ṣawāb* (“Opening the Door to the Truth and the Right”). It was the adoption of new hadith terminology and rationalising the necessity of engaging in *ijtihād*, Mīrẓā Muḥammad argues, that led to this division among classical and post-classical Twelver scholars.

سبباً للانسداد، وأدلة على المراد، هل تصلح للاستدلال ويكتفي به في محل النزاع والجدال؟ ثم ننظر ثانياً أن هل يجوز لنا معشر الإمامية مثل هذه الدعاوي الردية، وهل يستقيم هذه الدعوى على أصولنا الأصلية أم لا؟ [5] فنقول: إن لكم وجوهاً في أسباب الانسداد ذكرها أعلامكم. نحن نوردها واحداً بعد واحد، وننظر فيها ونتكلم بما لها وعليها متذكراً ومذكراً موقف العرض على رب العباد، فإنه بالمرصاد.

[6] قال أمير المؤمنين ع في خطبة خطبها بذى قار:

«واعلموا أنكم لن تعرفوا الرشد حتى تعرفوا الذي تركه، ولن تأخذوا بميثاق الكتاب حتى تعرفوا الذي نقضه، ولن تمسكوا به حتى تعرفوا الذي نبذه، ولن تلتوا الكتاب حق تلاوته حتى تعرفوا الذي حرّفه، ولن تعرفوا الضلالة حتى تعرفوا الهدى، ولن تعرفوا التقوى حتى تعرفوا الذي تعدّى، فإذا عرفتم ذلك عرفتم البدع والتكليف، ورأيتم القرية على الله ورسوله والتحريف لكتابه ورأيتم كيف هدى الله من هدى فلا يُجهلنكم الذين لا يعلمون».¹³

[7] الوجه الأول: أنّ القوم قالوا: إنّ غيبة الإمام ع صارت سبباً لسد باب العلوم والأحكام.

[8] وأجيب: بأن غيبة الشخص المعروف الذي كثرت الدواعي في حفظ علومه، وأجمعت الهمم في نشر رسومه، مع كثرة التصانيف والمصنفين، وتوالي المدرسين والمتدربين، وتكثر الدفاتر والأصول والدواوين التي دونت من كلام آبائهم الصادقين، لا يستلزم غيبة علومه. ولو كان كذلك لما وصلت إلينا أخبار الأنبياء الماضين، والقهارمة، والقياصرة، والفراعنة، والكجاسرة، والسلاطين، وأخلافهم وسيرتهم في رعيّتهم، وسائر ما يتعلق بهم من شيمهم وسجّيتهم، ولا اتصلت إلينا علوم الفلاسفة والمهندسين، ومنظومات الشعراء الأولين،¹⁴ وخطب البلغاء المفلقين، وآثار السلف الصالحين، وأخبار أعمار المعمرين، وطرائف نكات المؤدبين، وغرائب حجج المتكلمين، ودقائق أنظار المدققين، وحقائق أفكار المحققين، وإشراقات قلوب العارفين، وسوانح سبل السالكين، مع طول الدهور والأزمان وبعُد الأعوام وتوالي الأوان. ومن تأمل في تصديق هذا البيان، فليتبّع كتب السير والآداب والتواريخ، مع قلة دواعي النقل والضبط والرواية لها من الأعيان، لأنها ليست من الفرائض والحكم والأحكام ولا من الحلال والحرام، حتى يتبين لديه تبين الضوء بعد الظلام أنّ سير¹⁵ النبي ص والأطيبين من ذريته -صلوات الله عليهم أجمعين- وعلومهم وآثارهم وحكمهم وأخبارهم، مع الاشتهار التام وكثرة الأتباع من الأنام والرواة من الأعلام وقرب الأيام بالنسبة من سائر الأنبياء الكرام، شائعة ذائعة لا يشوبها شوب الأوهام ولا يعتريها تشكيك العوام، مع أن العناية الإلهية¹⁶ في حفظ الشريعة المحمدية، والطريقة العلوية، والسنن المعصومية، والحجج المهدوية، وبركات الأئمة الفاطمية، ودعوات النبي والذرية -عليه وعليهم أفضل السلام والتحية-، ووجوب إتمام الحجة، وإيضاح المحجة على رب البرية، أوجبت حفظها بلا مَرِية.

الكافي، ج 8 ص 390 13

Missing in B. 14

سيرت: B. 15

الربانية/الإلهية: D. 16

In his analysis, Mīrzā Muḥammad poses the following questions: What is *insidād* and what led to its occurrence? Does such a theory agree with or contradict the fundamental teachings of Twelver Shi‘ism? What evidence do Uṣūlīs cite in support of this theory? Mīrzā Muḥammad’s treatise aims to identify these proofs and assess their validity and meaning. At the outset of his refutation of Uṣūlī arguments, the author, alluding to the importance of engaging in examining his opponent’s views, cites a sermon of ‘Alī b. Abī Ṭālib in which he discusses the necessity of diagnosing evil to know righteousness and recognising the one who errs and violates the commandments of the Qur’an to know how to truly follow it.⁹

[7–8] The First Argument

Uṣūlīs claim that the occultation of the twelfth Imam appears to have closed the door to ascertaining definitive knowledge and truly knowing the rulings of God. Mīrzā Muḥammad responds that one must distinguish between the disappearance of an individual and the disappearance of his intellectual legacy, particularly when his charisma attracted numerous followers who recorded his teachings, made arrangements to disseminate his commandments, and also preserved the words and teachings of his venerated ancestors. The disappearance of an imam, Mīrzā Muḥammad argues, should not lead one to conclude that his legacy has vanished. The occultation of the twelfth Imam occurred at a time in which there was a vibrant culture of writing and learning. Shi‘i authors produced numerous notebooks and works of hadith. Leading scholars also directly transmitted their knowledge to students. It is for the same reason we know of the existence of ancient prophets, pharaohs, and other rulers. We know about their beliefs and the ways in which they treated members of their respective communities. Likewise, we are able to recite verses of poetry belonging to poets and discuss the views of various philosophers who lived in the ancient world. Despite the numerous generations separating us from them, we still rely on the insights of meticulous scholarship and the wisdom of ascetics and the spiritually enlightened from centuries past.

If one desires to know the teachings of the Prophet and his righteous descendants, then there are famous and trustworthy scholars of hadith who transmit such knowledge from one generation to the next. This is coupled with God’s grace which has ensured the preservation of the teachings of the Prophet and the descendants of Fāṭima who are the unequivocal proofs (*ḥujaj*, sing. *ḥujja*) of God. In support of this response, the author lists twelve reports [9–20] from the Imams.

- [9] قال الصادق ع: «إن الله احتج على الناس بما آتاهم وعرفهم».¹⁷
- [10] وقال ع: «في قول الله عز وجل: ﴿وَمَا كَانَ اللَّهُ لِيُضِلَّ قَوْمًا بَعْدَ إِذْ هَدَاهُمْ حَتَّى يُبَيِّنَ لَهُمْ مَا يَتَّقُونَ﴾»¹⁸
- قال: حتى يعرفهم ما يرُضيه وما¹⁹ يسخطه، وقال: ﴿فَالَهُمْهَا جُورُهَا وَتَقَوَّاهَا﴾²⁰ قال: بين لها ما تأتي وما تترك، وقال: ﴿إِنَّا هَدَيْنَاهُ السَّبِيلَ إِمَّا شَاكِرًا وَإِمَّا كَفُورًا﴾²¹ قال: عرفناه إما آخذ وإما تارك، وعن قوله: ﴿وَأَمَّا ثَمُودُ فَهَدَيْنَاهُمْ فَاسْتَحَبُّوا الْعَمَى عَلَى الْهُدَى﴾²² قال: عرفناهم فاستحبوا العمى على الهدى وهم يعرفون، وفي رواية: بينا لهم».²³
- [11] وعنه قال: «سألت ع عن قول الله: ﴿وَهَدَيْنَاهُ النَّجْدَيْنِ﴾»²⁴ قال: نجد الخير ونجد الشر».²⁵
- [12] وعن بريد بن معاوية عن أبي عبد الله ع قال: «ليس لله على خلقه أن يعرفوا، ولخلق على الله أن يعرفهم، والله على الخلق إذا عرفهم أن يقبلوا».²⁶
- [13] وعنه ع قال: «ما حجب الله عن العباد فهو موضوع عنهم».²⁷
- [14] وعن حمزة بن الطيار عن أبي عبد الله ع قال: «قال لي: اكتب فأملى عليّ: إن من قولنا إن الله يحتج على العباد بما آتاهم وعرفهم ثم أرسل إليهم رسولا وأنزل عليهم الكتاب فأمر فيه ونهى. أمر فيه بالصلاة فنام رسول الله ص عن الصلوة فقال: أنا أنيك وأنا أوقظك فإذا قت فصل ليعلموا إذا أصابهم ذلك كيف يصنعون. ليس كما يقولون: إذا نام عنها هلك. وكذلك الصيام أنا أمرضك وأنا أصححك وإذا شفيتك فاقضه. ثم قال أبو عبد الله ع: وكذلك إذا نظرت في جميع الأشياء لم تجد أحدا إلا والله عليه الحجة، والله فيه المشية، إلى أن قال وما أمروا إلا بدون سعتهم وكل شيء أمر الناس به فهم يسعون له، وكل شيء لا يسعون له فهو موضوع عنهم، ولكن الناس لا خير فيهم».²⁸
- [15] وعن الوشاء قال: «سمعت الرضا ع يقول إن أبا عبد الله ع قال: إن الحجة لا تقوم²⁹ لله عز وجل على خلقه³⁰ إلا بإمام حتى يعرف على الأمة».³¹
- [16] وعن أبي عبد الله ع قال: «ما زالت الأرض إلا والله فيها³² الحجة، يعرف الحلال والحرام»³³ ويدعوا الناس إلى سبيل الله».³⁴
- [17] وعن أحدهما عليهما السلام قال: «إن الله لم يدع الأرض بغير عالم ولولا ذلك لم يعرف الحق من

17 الكافي، ج 1 ص 163-162؛ التوحيد 411-410 صص

18 9:115

19 missing in D.

20 91:8

21 76:3

22 41:17 missing in A, C and D. و

23 الكافي، ج 1 ص 163؛ التوحيد، ص 411، تفسير علي بن إبراهيم، ج 1 ص 360

24 90:10

25 الكافي، ج 1 ص 163؛ التوحيد، ص 411

26 الكافي، ج 1 ص 164؛ التوحيد، ص 412

27 الكافي، ج 1 ص 164؛ التوحيد، ص 413

28 الكافي، ج 1 صص 164-165

29 لا يقوم B:

30 Missing in D.

31 الكافي، ج 1 ص 177؛ قرب الإسناد، ص 351

32 عليه فيها B:

33 Missing in A.

34 بصائر الدرجات، ص 504؛ الكافي، ج 1 ص 178

[9–13] Al-Ṣādiq states, “God holds humans accountable for that which he provides and teaches them.”¹⁰ By contrast, humans are not responsible for that which God conceals from them. In another report, al-Ṣādiq explains, “God does not oblige humans to independently know anything, rather, they expect God to teach them. When God provides them with knowledge, then they are obliged to accept those teachings.”¹¹

In another report, al-Ṣādiq cites a number of verses of the Qur’an as evidence that God always identifies the paths of guidance and misguidance before holding members of a community responsible for their decisions and actions. For example, Qur’an reads, “Indeed we guided him to the path, be he thankful or ungrateful.”¹² The Imam interprets the verse in the following way, “We provide him with knowledge, but he either takes it or casts it aside.” Qur’an reads, “As for Thamūd, we provided them with guidance, but they preferred blindness to guidance.”¹³ Al-Ṣādiq interprets this: since God gave them knowledge, they intentionally chose blindness over guidance. They were fully aware of what they were doing.¹⁴ When a disciple asks al-Ṣādiq about the verse, “Have we not shown him the two paths?”¹⁵ he explains, “it is the virtuous path and the evil one.”¹⁶

[14] In a more detailed explanation of the above arguments, al-Ṣādiq is reported to have explained that God is the source for all knowledge pertaining to religion. Even when commandments cannot be properly carried out, God provides knowledge regarding the appropriate remedy in such cases. It was God who commanded the Prophet to worship him, but then caused him to sleep. It was God who then awoke the Prophet and taught him that one could offer a lapsed prayer upon waking. It is the same with the one who is obliged to fast, but then falls ill. It is God who provides one with good health and causes one to fall ill. For this reason, God instructs a sick person to make up for a missed fast only once he is in better health. God never commands anything beyond the capacity of humans. Humans only fail to carry out his commands when there is no goodness in their own selves.¹⁷

[15–17] Mīrzā Muḥammad then turns to three reports that substantiate the quintessential doctrine of Twelver Shi‘a, namely, that there should always be a deputy of God on earth. This deputy serves as God’s unequivocal proof (*ḥujja*) of all that is right. Al-Ṣādiq states, “God cannot hold members of a community accountable without an imam who first provides them with knowledge.”¹⁸ According to another report, “God never leaves the earth without one endowed with knowledge. Otherwise, no one would know truth from falsehood.”¹⁹

الباطل».³⁵

[18] وقال الصادق ع: «إِنَّكُمْ لَا تَكُونُونَ صَالِحِينَ حَتَّى تَعْرِفُوا، وَلَا تَعْرِفُوا حَتَّى تَصَدَّقُوا، وَلَا تَصَدَّقُوا حَتَّى تَسْلَمُوا إِلَى أَنْ قَالَ: إِنَّ اللَّهَ تَبَارَكَ وَتَعَالَى أَخْبَرَ الْعِبَادَ بِطَرِيقِ الْهُدَى، وَشَرَعَ لَهُمْ فِيهَا الْمَنَارَ، وَأَخْبَرَهُمْ كَيْفَ يَسْلُكُونَ إِلَى أَنْ قَالَ: إِنَّهُ مَنْ أَتَى الْبُيُوتَ مِنْ أَبْوَابِهَا اهْتَدَى، وَمَنْ أَخَذَ فِي غَيْرِهَا سَلَكَ طَرِيقَ الرَّدَى إِلَى أَنْ قَالَ: إِنَّ اللَّهَ قَدْ اسْتَخْلَصَ الرِّسْلَ لِأَمْرِهِ ثُمَّ اسْتَخْلَصَهُمْ مَصَدِّقِينَ بِذَلِكَ فِي نَذَرِهِ فَقَالَ: ﴿وَأَنْ مِنْ أُمَّةٍ إِلَّا خَلَا فِيهَا نَذِيرٌ﴾.³⁶ تَاهَ مِنْ جَهْلٍ وَاهْتَدَى مِنْ أَبْصَرٍ وَعَقَلَ. إِنَّ اللَّهَ عَزَّ وَجَلَّ يَقُولُ: ﴿فَإِنَّهَا لَا تَعْمَى الْأَبْصَارُ وَلَكِنْ تَعْمَى الْقُلُوبُ الَّتِي فِي الصُّدُورِ﴾.³⁷ وَكَيْفَ يَهْتَدِي مَنْ لَمْ يَبْصُرْ وَكَيْفَ يَبْصُرُ مَنْ لَمْ يَتَذَبَّرْ؟ اتَّبِعُوا رَسُولَ اللَّهِ ص وَأَهْلَ بَيْتِهِ وَأَقْرَبُوا بِمَا نَزَلَ مِنْ عِنْدِ اللَّهِ وَاتَّبِعُوا آثَارَ الْهُدَى فَإِنَّهُمْ عَلَامَاتُ الْأَمَانَةِ وَالتَّقَى إِلَى أَنْ قَالَ: اقْتَصُوا الطَّرِيقَ بِالتَّمَسُّكِ بِالْمَنَارِ وَالتَّمَسُّكِ مِنْ وَرَاءِ الْحِجَابِ الْآثَارَ تَسْتَكْمِلُوا أَمْرَ دِينِكُمْ وَتُؤْمِنُوا بِاللَّهِ رَبِّكُمْ».³⁸

[19] وعن أبي عبد الله ع أنه³⁹ قال: «أَبَى اللَّهُ أَنْ يُجْرِيَ الْأَشْيَاءَ إِلَّا بِالْأَسْبَابِ، فَجَعَلَ لِكُلِّ شَيْءٍ سَبَبًا، وَجَعَلَ لِكُلِّ سَبَبٍ شَرَحًا، وَجَعَلَ لِكُلِّ شَرَحٍ عَلَمًا، وَجَعَلَ لِكُلِّ عَلَمٍ نَاطِقًا عَرَفَهُ مِنْ عَرَفِهِ وَجَهْلَهُ مِنْ جَهْلِهِ، ذَلِكَ رَسُولُ اللَّهِ ص وَنَحْنُ».⁴⁰

[20] وقال أمير المؤمنين ع على منبر الكوفة: «اللَّهُمَّ إِنَّهُ لَا بَدَ لَأَرْضِكَ مِنْ حِجَّةٍ لَكَ عَلَى خَلْقِكَ يَهْدِيهِمْ إِلَى دِينِكَ وَيُعَلِّمُهُمْ عِلْمَكَ لئَلَّا تَبْطُلَ حِجَّتُكَ وَلَا يَضِلَّ أَتْبَاعُ أَوْلِيَائِكَ بَعْدَ إِذْ هَدَيْتَهُمْ بِهِ، إِمَّا ظَاهِرًا لَيْسَ بِالْمَطَاعِ، أَوْ مَكْتُمًا أَوْ مَرْتَقِبًا. إِنْ غَابَ عَنِ النَّاسِ شَخْصُهُ⁴¹ فِي حَالِ هَدْيِهِمْ لَمْ يَغِبْ عَنْهُمْ عِلْمُهُ، وَآدَابُهُ فِي قُلُوبِ الْمُؤْمِنِينَ مُثَبَّتَةٌ، هُمْ بِهَا عَامِلُونَ».⁴²

[21] يقول المؤلف: فهذه اثنا عشر حديثًا مع نظائرها الناصية والظاهرة المتظاهرة المتكاثرة تدل⁴³ على أنَّ طول غيبة الحجة⁴⁴ لا يستلزم سد باب العلوم على الشيعة، وإلا تبطل الحجة وتندرس المحجة.

[22] قال أستاذ المتكلمين أبو جعفر محمد بن عبد الرحمن بن قبة الرازي رضي الله عنه ما لفظه: ومذهب الإمامية أنَّ الأحكام منصوصة، واعلموا إنَّنا لا نقول منصوصة على الوجه الذي تسبق إلى القلوب ولكن المنصوص عليه بالجلل التي مَنْ فِهْمُهَا فَهْمُ الْأَحْكَامِ مِنْ غَيْرِ قِيَاسٍ وَلَا اجْتِهَادٍ.⁴⁵

[23] وقال صاحب المعالم رحمه الله ما نصه: إنَّ السيد قد اعترف في جواب المسائل التَّبَائِيَّاتِ⁴⁶ بأنَّ أَكْثَرَ أَخْبَارِنَا الْمَرْوِيَةِ فِي كِتَابِنَا مَعْلُومَةٌ مَقْطُوعٌ عَلَى صَحَّتِهَا، إِمَّا بِالتَّوَاتُرِ وَإِمَّا بِعِلَامَةٍ وَأَمَارَةٍ دَلَّتْ عَلَى صَحَّتِهَا وَصَدَقَ رَوَاتُهَا،

الحاسن، ج 1 ص 236؛ بصائر الدرجات، ص 347؛ 35
الكافي، ج 1 ص 178؛ كمال الدين، صص 203-204

36 35:24.

37 22:46

الكافي، ج 1 صص 181-183؛ كمال الدين، ص 411

39 Missing in B.

بصائر الدرجات، ص 26؛ الكافي، ج 1 ص 183

41 إن غاب شخصه عن الناس: A, B;

42 كمال الدين، ص 302. تفسير علي بن إبراهيم، ج 1 ص 359؛ الكافي، ج 1 ص 339

43 يدل: A, B, D;

44 Missing in B.

45 كمال الدين، ص 122

46 رسائل المرتضى، ج 1 صص 3-96

[18–19] The next set of reports reiterate the necessity of turning to the Imams for knowledge and the perils of ignoring their guidance. “Those who enter homes by their doors are guided, those who do not, fall into ruin...so follow God’s Messenger and his Household! Profess that which God reveals and follow the representatives of guidance for they are the signs of trust and security.”²⁰ Al-Ṣādiq states, “God decrees that all things must have a cause. Each cause has an explanation. For every explanation there is a clear sign. For every sign there is a door that speaks. Those who know of this door, know it well; those who do not remain ignorant. We and God’s Messenger constitute that door.”²¹

[20] In a sermon attributed to ‘Alī b. Abī Ṭālib, he is believed to have said that humanity continues to benefit from God’s deputy and his guidance even in his absence. He states, “O Lord! Indeed, your earth must always have your *ḥujja* to all of humanity. One who guides all people to your religion and provides them with your teachings. In this way, their responsibility to obey you remains and they are not led astray after choosing faith. Indeed, you guide them with such a person. Sometimes he is manifest, but people refuse his guidance. At other times he is concealed and so people await his return. And if the Imam disappears altogether and they are secure from violence, then, at the very least, they still have access to his teachings and traditions. His faithful followers serve as repositories for such teachings and know them very well.”²²

[21] Mīrzā Muḥammad concludes that the occultation of the Imam, however long its length, does not bar the Shi‘i community from accessing correct knowledge and certainty. Were this the case, his occultation would nullify God’s unequivocal proof in the world.

[22] Ibn Qiba al-Rāzī (d. before 317/929) states, “In the Imāmī [Twelver Shi‘i] school, Islamic rulings (*aḥkām*) are explicitly designated (*manṣūṣa*) [by God]. It should be clarified, however, that we do not mean that every ruling is explicitly pronounced by the law-giver. Rather, that there are general principles that are explicitly specified. Whosoever understands these principles, will know rulings without resorting to analogical reasoning or personal judgment.”²³

[23–24] Ṣāhib al-Ma‘ālim further cites the opinion of al-Sharīf al-Murtaḍā that most reports preserved in well-known Twelver Shi‘i hadith collections were, in fact, undoubtedly authentic.²⁴ He is sure of this because such reports were either widely-transmitted in every generation (*mut-awātir*) or possessed another indication (*amāra*) of their authenticity and the truthfulness of their transmitters. Thus, al-Murtaḍā believed such hadith engendered certainty even in cases where they appear to possess only a single chain of transmission. Elsewhere, al-Murtaḍā is asked directly, “If you reject the use of solitary reports (*al-akhbār al-āḥād*), then what recourse would one have in resolving any legal (*fiqh*) matter?” He responds that the views of the Twelver Imams on most legal matters are necessarily known (*bi-l-ḍarūra*) through widely-transmitted reports. Those few legal matters that do not fall into this category are further backed by a consensus among Twelver Shi‘a. In cases of contradictions, if one can ascertain that a particular opinion is *the* correct ruling, then one should take this course. Otherwise, one is free to choose between the available legal opinions.²⁵

فهي موجبةٌ للعلم مقتضيةٌ للقطع وإن وجدناها مودعةً في الكتب بسند مخصوص من طريق الآحاد.⁴⁷ [24] وقال علم الهدى الشريف المرتضى طاب ثراه ما لفظه: فإن قيل إذا أسدّتم باب طريق العمل بالأخبار الآحاد فعلى أي شيء تعملون في الفقه كله؟ وأجاب بما حاصله: أنّ معظم الفقه يعلم بالضرورة مذاهب⁴⁸ أثبتنا فيه بالأخبار المتواترة، وما لم يتحقق ذلك فيه -ولعله الأقل- يعول فيه على إجماع الإمامية، وذكر كلاماً طويلاً في بيان حكم ما يقع فيه الاختلاف بينهم ومحصوله: أنّه إذا أمكن تحصيل القطع بأحد الأقوال تعيّن العمل عليه، وإلا تكا مخيرين بين أقوال المختلفة لفقد التعيين.⁴⁹

[25] يقول المؤلف: فهذه شهادة ذوى عدل من أساتذة الكلام وعمد الإسلام تشمل أحاديث كتاب الكافي، وتفسير علي بن إبراهيم، والنعماني، والحميري، والصفار، والصدوق أيضاً، وما وقعت واقعة فيما بعد [أدت] إلى تضييعها بل هي موجودة إلى يومنا هذا ونسخها أكثر من أن تحصى، وفيها ما يكتفي به المرتاد لسلك سبيل الرشاد.

ديدها كور⁵⁰ و جهان پر آفتاب

إذا لم يكن للبرء عين صحيحة فلا غرو أن يرتاب والصبح مسفر

[26] الوجه الثاني: أنّ القوم قالوا: إنّ دلالة الألفاظ ظنية فلا يحصل منها علم وطريقنا إلى فقه الإمام ع منحصر فيها.

[27] وأجيب: بأن الأخبار المتضمنة للشرائع والأحكام وآثار الأئمة الأعلام ليست ألفاظاً مفردة ذات معان متعددة، وإنما جلها بل كلها جمل تامة ناصة على معانيها يعرف منها المرتاد وجه المقصد والمراد. ولو كانت الجمل والعبارات غير مفيدة للعلوم ولا مستقلة في إفادة المفهوم لما حصلت العلوم من العربية الأدبية واللغوية والسير والملاحم والوقائع، ولما أفادت⁵¹ عبارات الفقهاء المعاني التي أرادوها في بيان الشرائع، ولما صح لهم دعوى تحقق الإجماع لأنه مستفاد عندهم من تتبع كتب الفقهاء وكثرة الاطلاع مع أنّنا نعلم ضرورة معاني أكثر الروايات ومضامين غالب العبارات بل مقاصد الشعراء في القصائد المطولات مع كثرة تضمينها للاستعارات والكليات مثل علمنا لسائر المعلومات وليست تشكيكاتهم وفروض احتمالاتهم إلا تكذيب الوجدان بالعناد والطيران مع البازي بجناح الجراد. ولو ساغ اتباع الاحتمالات العقلية في مقابلة البراهين لما قام دليل على مطلب من مطالب الدين لأحد من المسلمين والمليين بل الفلاسفة والطبعيين. وما كانوا -سلام الله عليهم- يكلون الناس بكنه عقولهم ولا بالغاز وتعمية في جواب مسئولهم. وغلط بعض الأفهام في بعض المواد لا يضر فيما يعلم من المراد، وفي المحكمات كفاية عن المتشابهات.

معالم الدين وملاذ المجتهدين ص 274 47

من مذاهب: D 48

رسائل المرتضى، ج 3 صص 312-313 49

Missing in B. 50

A, C; عبارات من (in the margin): B 51

استفادات عبارات: D; عبارات أفادت

[25] Mīrẓā Muḥammad concludes his response by citing the titles of the Twelver Shi‘i hadith collections from which he cites these twelve reports: *al-Kāfī*, *Tafsīr ‘Alī b. Ibrāhīm* and the works of al-Nu‘mānī (d. 360/971), al-Ḥimyārī (d. after 293/905 or 305/917), al-Ṣaffār (d. 290/903) and al-Ṣadūq (d. 381/991).

[26] The Second Argument

Uṣūlīs claim that speech yields only uncertain knowledge. When we encounter such speech in statements attributed to the Twelver Imams, there remains doubt on whether our understanding of the statement reflects the appropriate ruling of the Imam on a legal matter.

[27] Mīrẓā Muḥammad responds that those reports which preserve the teachings of the Imams on legal and religious matters are neither rare, unique, nor vague and multivalent. Most, if not all of them, are clear statements. One who examines them will understand their intended meaning. If speech, in general, did not ever yield certainty, one would never be able to claim understanding of anything. There would be no coherence in the study of language, literature, law, or history. No jurist, for example, could ever discuss the concept of consensus (*ijmā‘*) since it is predicated on one’s ability to read and understand legal discussions in different books written over many centuries.

Mīrẓā Muḥammad writes that scholars understand the meaning of the vast majority of reports that they encounter from the Imams. Similarly, scholars mostly understand classical Arabic poetry despite its complex use of symbolism, metaphor, and uncommon expressions. Uṣūlī attempts to cast doubt on the epistemic value of speech itself is a poor attempt to refute the irrefutable. Were one to cast doubt on certainty on the basis of any conceivable possibility, despite clear evidence to the contrary, then nothing would ever be established in any discipline, be it religion, philosophy or science. Prophets and Imams addressed members of their societies according to their mental capacities. They did not speak in riddles. On occasion, there may be ambiguities (*mutashābihāt*) or cases of misunderstanding, but they do not negate the certainty that unambiguous cases (*muḥkamāt*) yield. The majority of speech falls in the latter category. Supporting his claim concerning the harmonious relation between Imams’ words and the understanding of their addressees, the author cites two reports.

[28] قال رسول الله ص: «إنا معاشر الأنبياء أمرنا أن نكلم الناس على قدر عقولهم».⁵²

[29] وقال أبو عبد الله ع: «ما كلم رسول الله العباد بكنه عقله قط».⁵³

[30] ويؤيد في هذا المقام ما حقق من أنّ خلق الألفاظ وإبداع المعاني تحتها بحيث متى يتلفظ بها يفهم تلك المعاني منها ربط إلهي لا يدرك كنهه إلا بمعونة نور الوحي والإلهام. والغرض فيه بيان المضمرات وإفاضة الحكم والأحكام من صحائف القلوب والأرواح إلى صفائح نظائرها من ألواح الأشباح، وغرض الحكيم لا يتم في فعله مع كون الربط بالظنون ﴿سُبْحَانَهُ وَتَعَالَى عَمَّا يُصِفُونَ﴾⁵⁴ وأصحاب الإدراك يفهمون المراد من الألفاظ والمعاني والإيهامات حيث تسكن⁵⁵ النفوس وتطمئن القوادر، والاحتمال غير ضائر في المقام لأنّه من عالم الأوهم.

[31] الوجه الثالث: أنّهم قالوا إنّ مجال التقية واحتمال التورية منعا للأفهام عن تعيين⁵⁶ المرام فصار قصارى⁵⁷ الأوهم تحصيل الظنون من الكلام.

[32] وأجيب: بأن هذا الاحتمال غير جار في جميع المواضع والحال وما جرى فيه حكم الخيال لا يضر بالباقي بالمآل مع أنّ حكم التقية احد فردّي الحق النفس الأمري المقصود لرب العباد في محله وأمر الحكيم متوجه في⁵⁸ طاعة أصحاب العصمة في جل ما يقولونه بل كله فتي تحقق عند المكلف ما صدر عن الإمام وجب عليه الاتّباع لحكم الكتاب والسنة وضرورة الإجماع.

[33] واعلم أنّ الله رب العالمين خلق الخلق أجمعين ليجود عليهم بتكميلهم إخراجاً عن سجن السجين، وإلحاقاً بمعونة السير بقدمي العمل واليقين والطيران بجناحي التسليم وتصديق الراسخين إلى فيافي روضات العليين، وأوجب عليهم طاعة أرباب الأنواع المعبر عنهم في لسان الظاهر بالحجج المعصومين فسائر الناس مرضى، ودار الشفاء هي الدنيا، والحجة هو الطبيب العارف بالأدوية والأدواء، والتكاليف الشرعية هي فنون الأدوية الشافية عن أمراض الطبيعة من المهلكات الهولانية والملكات الردية، والغرض حفظ الصحة وإزالة المرض ليستقيم الحركة الصعودية على الصراط المستقيم المؤدية إلى جنات النعيم.

[34] فما دامت⁵⁹ الحكمة الربانية تقتضي نظام النشأة الناسوبية الهولانية وعمرانها لتخليص المواد القابلة من جانبها وإنسانها وجب عليه إبقاء الطبيب، وحفظ الطب لمعالجة الأرواح وأبدانها، وتعريف الأدوية النافعة للأمرجة والأغذية الماسكة لأبدانها، وتكليف المرضى لعفونة الملكات في سجن الطبيعة بالرجوع إلى الأطباء الروحانيين والحكماء المعصومين ليعرفوهم الأدوية وأعيانهم فيسلّموا لهم ليسلّموا من ثوران الطبيعة وبحرانها. فما دام الداء باقياً فالدواء موجود وما يتوقف عليه استعماله وشربه من الطبيب الحاذق المعرف للدواء العارف بالأدواء وتركيب

الحاسن، ج 1 ص 195؛ الكافي، ج 1 ص 23 و ج 8 ص 52

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الكافي، ج 1 ص 23 و ج 8 ص 268

54 6:100.

يسكن D: 55

تعيين B: 56

قصار A: 57

إلى B: 58

دام A: 59

[28–29] God’s Messenger said, “God commanded us, as prophets, to address individuals according to their mental capacities.”²⁶ Imam al-Sādiq also stated that the Prophet never addressed humanity using the full potential of his intellect.²⁷ The implication is that had the Prophet attempted this, his community would have neither understood nor accepted his beliefs.

[30] Mīrzā Muḥammad then makes a metaphysical and spiritual argument. He believes that words and their respective meanings are divinely linked. One understands the intended meaning of speech only by means of divine assistance, a type of inspiration or revelatory experience. In this way, the faithful come to understand divine commandments. This process cannot occur if uncertainty and speculation underpin it. Sainly scholars (*aṣḥāb al-idrāk*) will even understand those statements that appear to be ambiguous, vague or riddles. It is God who endows them with certitude when they read such texts and offer interpretations.

[31] The Third Argument

Uṣūlīs argue that antagonism toward the family of ‘Alī and Shi‘ism led the Imams to dissimulate and use their discretion in sharing their religious beliefs. The possibility of such pressures affecting their statements prohibits us from having certainty in regards to the intended meaning of their speech. Therefore, the best that one’s intellect can grasp is the speculative meaning of the statements of the Imams reported in the hadith.

[32] Mīrzā Muḥammad responds that such a possibility does not affect every statement pronounced by the Imams. It cannot be used as a reason to cast doubt on their speech on every topic either. Even in cases where the Imam makes a pronouncement in the state of dissimulation (*taqiyya*), obedience to such a command under those circumstances is, in fact, the correct ruling.

[33–36] Mīrzā Muḥammad restates his argument in metaphysical and spiritual terms. The objective of humanity is to seek perfection, which is fulfilled by surrendering fully to the divine. This surrender occurs only when humans accept the teachings and follow the examples of infallible guides with access to revelation and wisdom from God. Humans are in need of these guides who serve as doctors for their spiritual ailments. The remedies that they offer are the teachings and commandments of the sacred law. God would not leave humanity without such a doctor or his remedies. People are in constant need of both. As long as this need for guidance exists, God must provide it. However, when a community turns on such a doctor and conspires to murder him, God may conceal this person while keeping his remedies and the wisdom that he can offer accessible to the community. God also empowers righteous disciples of this doctor to carefully preserve and disseminate his teachings far and wide. To fulfill this objective, disciples establish circles of learning and compose numerous books. Through these means, God averts any future objection from humans that they were unfairly left without guidance. God always provides a compelling argument or proof (*hujja*) to humanity in support of God’s religion. In this way, humans are fully aware when the paths that they choose are sinful or righteous. Mīrzā Muḥammad cites a few verses of the Qur’an to support this doctrine.

بعضها ببعض مبياً من طرف الرحيم الودود. ففتى عصي المرضى، واستنكفوا عن شرب الدواء، وهما على قتل الطبيب الدوّار، أخفى الله شخصه عن الأبصار وأبقى طبه وحكمته في الأدوار والأمصار ووفق جماعة من المرضى الذين ما كانوا يعصون عن أمره بتنسيخ⁶⁰ نُسَخها وحفظها ونشرها وتعليمها وتعلمها بالدرس والتكرار لآثه لو أراد مريد من المرضى إزالة الداء الدوي عن نفسه أمكنه استعمال الدواء وشربه.

[35] قال الله تعالى: ﴿وَنَفْسٍ وَمَا سَوَّاهَا - فَأَلْهَمَهَا فُجُورَهَا وَتَقْوَاهَا - قَدْ أَفْلَحَ مَنْ زَكَّاهَا - وَقَدْ خَابَ مَنْ دَسَّاهَا﴾،⁶¹ وقال: ﴿لِيَهْلِكَ مَنْ هَلَكَ عَنْ بَيِّنَةٍ وَيَحْيَىٰ مَنْ حَيَّ عَنْ بَيِّنَةٍ﴾،⁶² وقال: ﴿قُلْ فَلِلَّهِ الْحُجَّةُ الْبَالِغَةُ﴾.⁶³

[36] فلو سد الله باب⁶⁴ العلم إلى معرفة الدواء وكيفية معالجة الداء كما أخفى شخص الطبيب عن المرضى لما صح له تكليفهم بشرب الدواء، ولبطل غرض نصب الطبيب، ولما تم الحجة على المرضى، وسبما الذين ما قصروا في الامتثال ولا قصرت نياتهم في جميع الأحوال ولو وكل الله المرضى إلى آرائهم وظنونهم لحصل⁶⁵ الاستغناء عن الطبيب في شئونهم، ولبطل⁶⁶ التكميل فإن رأى العليل عليل. ولو كان للمرضى⁶⁷ مكنة معرفة الدواء وتشخيص الأدوية لكانوا أطباء.

[37] وفي مناظرة الشامي مع هشام: «ثم قال للشامي: يا هذا أربك أنظرُ لخلقه أم خلقه لأنفسهم؟ فقال الشامي: بل ربي أنظرُ لخلقه. قال: ففعل بنظره لهم ماذا؟ قال: أقام لهم حجة ودليلاً كيلا يتشتتوا أو يختلقوا يتألفهم ويقم أودهم ويخبرهم بفرض ربهم. قال: فمن هو؟ قال: رسول الله. قال هشام: فبعد رسول الله من؟ قال: الكتاب والسنة. قال هشام: فهل ينفعنا اليوم الكتاب والسنة في رفع الاختلاف عنا؟ قال الشامي: نعم. قال: فلم اختلفنا⁶⁸ أنا وأنت وصرت إلينا من الشام في مخالفتنا إياك؟ قال: فسكت الشامي. فقال أبو عبد الله للشامي: ما لك لا تتكلم؟ قال الشامي: إن قلت لم اختلف كذبت، وإن قلت إن الكتاب والسنة يرفعان عنا الاختلاف أبطلت لأنهما يحتلمان الوجه، وإن قلت قد اختلفنا وكل واحد منا يدعي الحق فلم ينفعنا إذن الكتاب والسنة إلا أن لي عليه هذه الحجة. فقال أبو عبد الله: سلّه تجده ملياً. فقال الشامي: يا هذا من أنظرُ للخلق - أ ربهم أو أنفسهم؟ فقال هشام: ربهم أنظر لهم منهم لأنفسهم. فقال الشامي: فهل أقام لهم من يجمع لهم كلمتهم ويقم أودهم ويخبرهم بحقهم من باطلهم؟ قال هشام: في وقت رسول الله أو الساعة؟ قال الشامي: في وقت رسول الله رسول الله.⁶⁹ والساعة من؟ فقال هشام: هذا القاعد الذي تشد إليه الرحال ويخبرنا بأخبار السماء وراثته عن أب عن جد. قال الشامي: فكيف لي أن أعلم ذلك؟ قال هشام: سلّه عما بدا لك. قال الشامي: قطعت عذري فعلي السؤال» - الحديث.⁷⁰

60 B: بنسخ

61 10-91:7

62 8:42

63 6:149

64 B: سد باب الله

65 B: حصلت

66 A: فبطل

67 B: في المرضى

68 A: اختلفت أنا; B, C, D: اختلفت

69 A: رسول الله is missing.

70 الكافي، ج 1 صص 172-173

Were humans to lose access to the teachings of the prophets and Imams, then it would not make any sense for God to impose on them moral obligations (*taklif*). This would be akin to concealing the spiritual doctor and all his remedies with him. It would be unfair for God to expect people to know how and when to use the right remedies to heal themselves. God would also have no compelling evidence to support holding such people accountable or punishing them for failing to fulfil God's expectations of them. It also does not make sense for God to expect the righteous among them, let alone those with spiritual maladies, to speculate or guess which remedies may help people. *The opinion of the enfeebled is itself enfeebled*. If the masses possessed the ability to identify and provide people with the correct remedies, they would be doctors.

[37] In a debate between Hishām b. al-Ḥakam (d. 179/795), the renowned companion of al-Ṣādiq and a certain Syrian, representing proto-Sunni doctrine, both agree that God, in his wisdom, knows the needs of humans and provides them with guidance. The Prophet served as God's *ḥujja*. He served as God's representative on earth, he taught people their responsibilities to God and aided those in need. The community obviously turned to the Prophet as their authority on religion. In this way, he prevented dissension in religious matters. When Hishām asks the Syrian who served as God's *ḥujja* after the Prophet, the Syrian responds that the Qur'an and the Prophet's example (*sunna*) fulfilled this function.

When Hishām asks whether the Qur'an and the Prophet's example suffice in preventing dissension in the Muslim community, the Syrian responds in the affirmative. Hishām then forces him to reconsider this belief, "If this is the case, then why do you and I disagree with one another [as – what later came to be known – a Sunni and a Shi'a]? Why have you come here from Syria to debate me?" When the Syrian falls silent, Ja'far al-Ṣādiq, who is observing the debate, asks, "Why don't you respond?"

The Syrian says, "If I claim there is no disagreement between us, then this would be a lie. If I claim that the Qur'an and the Prophet's example prevent people from such disagreements, then this would also be false, since they are multivalent and can be potentially interpreted in different ways. If I admit that we indeed disagree with one another and each of us claims to be right, then the Qur'an and the Prophet's example have not succeeded in preventing dissension among us." The Syrian then asks Hishām two key questions. First, whether he believes that there is a person who can authoritatively identify which Muslims are right from those who are wrong on religious matters after the Prophet. Second, if it is God who provides the community with such a person. Hishām answers both in the affirmative. The Prophet fulfilled such a function in his lifetime, while al-Ṣādiq is this person at the moment. Al-Ṣādiq does this by means of knowledge that was transmitted and inherited from grandfather to father to son.

The Syrian asks, "But how can I be sure of this?"

Hishām answers, "Ask him whatever you like."

The Syrian says, "I no longer have any excuse not to. I will need to begin asking him questions." Mirzā Muḥammad ends his citation of the report here, but in *al-Kāfī*, the Syrian converts after al-Ṣādiq reveals his miraculous knowledge of everything that occurred on his trip.²⁸

[38] فعلم أنّه لا بدّ للأنام من طريق إلى الإمام أو إلى عليه ع ليرتفع النزاع ويكشف القناع ويتبين المراد للمنصف المرتاد ولا ينفعنا الكتاب والسنة إلا ببيان عن الأئمة، فلها غاب الإمام عن الأبصار وجب على الله إبقاء علمه لهداية الأبرار.

[39] وعن أبي عبيدة عن أبي جعفر ع قال: «قال لي: يا زياد ما تقول لو أفتينا رجلاً ممن يتولانا بشيء من التقية؟ قال: قلت له: أنت أعلم جعلت فداك.»

قال: إن أخذ به فهو خير له وأعظم أجراً.

وفي رواية أخرى: إن أخذ به أوجر وإن تركه -والله- أثم.⁷¹

[40] وعن الأحول عن أبي عبد الله ع قال: «لا يسع الناس حتى يسألوا ويتفقهوا ويعرفوا إمامهم، ويسمعهم أن يأخذوا بما يقول، وإن كانت تقية.»⁷²

[41] وعن أبي الصباح قال: «والله لقد قال لي جعفر بن محمد ع: إنّ الله علّم نبيه التنزيل والتأويل فعلمه رسول الله ص علياً ع. قال: وعلّينا -والله- ثم قال: ما صنعتم من شيء أو حلفتم عليه⁷³ من يمين في تقية، فأنتم منه في سعة.»⁷⁴

[42] والوجه الرابع: أنّ القوم قالوا إنّ وجود المتشابهات رفع الاعتماد عن المحكمات، وسد باب اليقين على الطالبين.

[43] وأجيب بأنّ التشابه والمحكم متميزان بالذات، ولا يتشابه المحكم بمحض الاحتمالات، والمتشابه قد يردّ إلى المحكم فيرتفع التشابه عند من علم وإن لم يمكن التوفيق وجب الإرجاء والتصديق، فإنّ السنة والأخبار فيها محكم ومتشابه كما في القرآن عند الاعتبار، وقد⁷⁵ قال الله تعالى: ﴿هُوَ الَّذِي أَنْزَلَ عَلَيْكَ الْكِتَابَ مِنْهُ آيَاتٌ مُحْكَمَاتٌ هُنَّ أُمُّ الْكِتَابِ وَأُخَرُ مُتَشَابِهَاتٌ فَأَمَّا الَّذِينَ فِي قُلُوبِهِمْ زَيْغٌ فَيَتَّبِعُونَ مَا تَشَابَهَ مِنْهُ ابْتِغَاءَ الْفِتْنَةِ وَابْتِغَاءَ تَأْوِيلِهِ وَمَا يَعْلَمُ تَأْوِيلَهُ إِلَّا اللَّهُ وَالرَّاسِخُونَ فِي الْعِلْمِ﴾⁷⁶ وقال علي ع: «فإنّ أمر النبي ص مثل القرآن ناسخ ومنسوخ، وخاص وعام، ومحكم ومتشابه. قد كان يكون من رسول الله ص الكلام، له وجهان: كلام⁷⁷ عام، وكلام خاص مثل القرآن. وقال الله عز وجل في كتابه: ﴿وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا﴾⁷⁸ فيشبهه على من لم يعرف ولم يدر ما عني الله به ورسوله.»⁷⁹

[44] وفي العيون عن الرضا ع قال: «إنّ في أخبارنا متشابهات كمتشابه القرآن، ومحكما كحكم القرآن، فردوا متشابهها إلى محكمها، ولا تتبعوا متشابهها دون محكمها، فتضلوا.»⁸⁰

[45] وعن أبي جعفر ع قال: «من أفتى الناس وهو لا يعلم الناسخ من المنسوخ، والمحكم والمتشابه، فقد هلك

وأهلك.»⁸¹

71 الكافي، ج 1 ص 65

72 الكافي، ج 1 ص 40

73 Missing in B.

74 الكافي، ج 7 ص 442

75 Missing in A.

76 3:7

77 A, B, C, D: وكلام

78 59:7. The first و is missing in A and C.

79 الكافي، ج 1 صص 63-64

80 عيون أخبار الرضا، ج 1 ص 261

81 المحاسن، ج 1 ص 206؛ الكافي، ج 1 ص 43؛ الأمالي

للصدوق، ص 421

[38] Mīrẓā Muḥammad states that the above report clarifies the purpose of Imams. One must turn to the Imams or their teachings to avoid dissension, know one's duties to God, and correctly understand the Qur'an and the Prophet's example. One cannot truly benefit from either of these two sources of guidance without the Imams who authoritatively interpret them. In their absence, their hadith continue to provide such guidance.

[39–41] Returning to the subject of *taqiyya*, Mīrẓā Muḥammad cites three reports that indicate that when the Imam makes a pronouncement while dissimulating, his partisans are rewarded for obeying such a command. Al-Ṣādiq, for example, states, "If one follows such an instruction, there is good in it and he receives a greater reward."²⁹ In another report, he states, "One is rewarded if one obeys it and commits a sin if it is ignored."³⁰ In this way, Mīrẓā Muḥammad defuses the argument that obeying statements of the Imams potentially made while dissimulating may lead disciples to the wrong ruling. Those rulings, in fact, are the correct ones to follow in those circumstances.

[42] The Fourth Argument

Uṣūlīs argue that the continued presence of ambiguities undermines our ability to understand even the unambiguous reports of the Imams resulting in the closure of the gates of certainty.

[43] Mīrẓā Muḥammad responds that the ambiguous and unambiguous are easily distinguishable. One should apply unambiguous principles when encountering ambiguities to ensure compliance with sacred law. One can also compare ambiguous texts to unambiguous ones to interpret them correctly. If none of these methods work, then one should defer interpreting them since the Qur'an and the Prophet's example can have ambiguities. 'Alī b. Abī Ṭālib once stated that the Prophet's example, very much like the Qur'an, includes commands that abrogate previous instructions. "They also include the general, the specific, the unambiguous, and the ambiguous. Some of the Prophet's words were multivalent. His commands, like the Qur'an, included the universal and the contingent. The one without knowledge fails to determine the exact nature of God's and his Messenger's commands. Indeed, the Qur'an states, 'Accept that which the Messenger provides you and refrain from what he forbids you.'"³¹

[44–45] Thus, the Imams encourage the faithful to follow those instructions that are unambiguous and to rely on them for guidance. Muḥammad al-Bāqir also warns those who do not know the Prophet's abrogated instructions or how to differentiate the unambiguous from the ambiguous to refrain from providing the laity with their own legal opinions. Al-Bāqir is referring to some of his contemporaries who were renowned as authorities in Islamic law and attracted followers.³²

[46] أقول: فلو جاز للناس أن يتركوا المحكمات باحتمال كونها متشابهات أو يعملوا على المتشابهات⁸² بمظنة أنّها المحكمات لجاز لهم إمّا ترك العمل على الكتاب والسنة مطلقاً، أو استعمالهما مطلقاً، ولما بقي الافتراق بين المحكم والمتشابه والحصل الاتفاق.

[47] [الوجه] الخامس: أنّ القوم قالوا إنّ الاختلاف أوقع الاعتساف وسد باب العلم في الأحكام وأوقف الأمر على الظنون والأوهام.

[48] وأجيب: بأنّ الأئمة ع ليس في حكمهم اختلاف وإنما الجاهل عن فهم كلامهم يحسب التوسعة اختلافاً والرخصة في غير العزائم خلافاً ولو تركوا كل حكم بمكانه وعملوا بمقتضى كل حديث بمظانه⁸³ واقتصروا على النصوص في العموم والخصوص وتركوا التعدي ورفضوا التظني لما زاد الاختلاف على ما هو الإنصاف. والأئمة ع قرروا القواعد لرفع اختلاف الأحكام ثم وسعوا علينا في الإرجاء والتسليم لهم ع. وما ضيقوا في شيء من الأمور ولكن الناس ضيقوا على أنفسهم بالغرور.

[49] في المحاسن بإسناده عن عبد الأعلى بن أعين قال: «سأل علي بن حنظلة أبا عبد الله ع عن مسألة وأنا حاضر. فأجابه فيها فقال له علي: فإن كان كذا وكذا فأجابه بوجه آخر حتى أجابه بأربعة أوجه. فقال علي بن حنظلة: يا أبا محمد هذا باب قد أحكمناه. فسمعه أبو عبد الله ع فقال له: لا تقل هكذا يا أبا الحسن فإنك رجل ورع. إنّ من الأشياء أشياء مضيقّة ليس تجري إلا على وجه واحد، منها وقت الجمعة ليس لوقتها إلا حد واحد حين نزول الشمس، ومن الأشياء أشياء موسعة تجري على وجه كثيرة وهذا منها. والله إنّ له عندي لسبعين وجهاً».⁸⁴

[50] أقول: فلا يصح للقوم طرح الأخبار الواردة في أبواب التوسعة لتخالفها في الظواهر بجعل القواعد الجزئية كلية ظنية زعماء⁸⁵ منهم مخالفتها إياها، ويفعلون ويفعلون ﴿فَسَبِّحْهُ وَبِصْرُونَ﴾.⁸⁶

[51] وفي الخصال بإسناده عن حماد بن عثمان قال: «قلت لأبي عبد الله ع: إنّ الأحاديث تختلف عنكم قال: فقال: إنّ القرآن نزل على سبعة أحرف، وأدنى ما للإمام أن يفتي على سبعة وجوه. ثم قال: ﴿هَذَا عَطَاؤُنَا فَامْنُنْ أَوْ أَمْسِكْ بِغَيْرِ حِسَابٍ﴾».⁸⁷

[52] وعن نصر الخثعمي قال: «سمعت أبا عبد الله ع يقول: من عرف إنّنا لا نقول إلا حقاً فليكتف بما يعلم منا، فإن سمع منا خلاف ما يعلم فليعلم أنّ ذلك دفاع منا عنه».⁸⁸

[53] وعن سماعة عن أبي عبد الله ع قال: «سألت عن رجل اختلف عليه رجلان من أهل دينه في أمر كلاهما يرويه، أحدهما يأمر بأخذه والآخر ينهيه عنه كيف يصنع؟ قال: يرجئه، حتى يلتقي من يخبره فهو في سعة حتى يلقاه. وفي رواية أخرى: بأيّهما أخذت من باب التسليم وسعك».⁸⁹

82 B: بالمتشابهات

83 A, C, D: بمضانه. A marginal note in C elucidates its meaning in Persian: بجل خود

84 المحاسن، ج 2 صص 299-300

85 A: زغما

86 68:5, A and D: و instead of ف

87 38:39. تفسير العياشي، ج 1 صص 12-13؛ الخصال، ج 2 ص 358

88 المحاسن، ج 2 ص 335؛ الكافي، ج 1 صص 65-66

89 الكافي، ج 1 ص 66

[46] If, on account of ambiguities, Mīrẓā Muḥammad summarises, the faithful were not required to comply with unambiguous commands, then this would ultimately lead them to abandon the Qur'an and the *sunna* altogether and there would remain no substantive difference between the two categories.

[47] The Fifth Argument

Uṣūlīs argue that the hadith literature that has reached us includes many contradictions. These contradictions have led to some misunderstanding and prevented the faithful from having certainty or truly knowing the rulings of God. Their knowledge, therefore, can be described as only speculative or uncertain.

[48] Mīrẓā Muḥammad responds that no contradictions exist in the rulings of the Imams. The Imams occasionally discuss accommodations that can be made for someone who cannot fulfil an obligation. In other cases, Muslims have a choice in how or when to fulfil obligations. Some without expertise may identify these secondary rulings as contradictions, but they do so in error. Moreover, the Imams have provided us with instructions and procedures that resolve these apparent contradictions. They also informed us of certain accommodations to assist us in fulfilling our duties to God, but people make the practice of religion more rigid and difficult for themselves.

[49] 'Alī b. Ḥaṇẓala once asked al-Ṣādiq a legal question and after receiving the answer asked whether the ruling would change under different circumstances. When al-Ṣādiq answered in the affirmative, they ultimately discussed how the corresponding ruling would change under four different circumstances. Pleased with the exchange, 'Alī b. Ḥaṇẓala then turned to a companion and said that he now fully understood the legal matter. When al-Ṣādiq heard him say this, he cautioned him against believing that and explained, "Some matters are absolute and have only one ruling...other matters can accommodate varying circumstances and conditions with greater flexibility. This is but one example. I could provide seventy different rulings for your legal question depending on the circumstances."³³

[50] Mīrẓā Muḥammad then turns to the Uṣūlīs reminding them that they should not discard hadith that discuss rulings for exceptional cases simply because they appear to contradict other reports discussing universal principles and normative practices.

[51–54] To support his claim that the reports of the Imams are not essentially contradictory as they might appear, Mīrẓā Muḥammad cites four reports. Al-Ṣādiq, in the first report, states that an imam can offer varying rulings on a subject just as verses of the Qur'an can be recited in more than one way.³⁴ In the second report, the Imam is believed to have offered the following advice, "He who knows that we speak only the truth should trust what he knows about our teachings. If he later hears something that appears to contradict it, he should know that we made a strategic decision to protect him with such a statement."³⁵ Al-Ṣādiq appears to be referring to those instances where he or another Imam may have felt compelled to dissimulate. He explains that such dissimulation protects Shi'a from harm that would otherwise have befallen them in openly sharing their views. In the third report, al-Ṣādiq explains that when Shi'a encounter contradictory rulings from the Imams and are unsure of the appropriate command to follow, then they should defer making a decision until they are able to learn more information that can resolve the issue. In the meantime, it is acceptable for them to choose to abide by any of the rulings that they encounter.³⁶

[54] وعن معلى بن خنيس قال: «قلت لأبي عبد الله ع: إذا جاء حديث عن أولكم وحديث عن آخركم بأيهما نأخذ؟ فقال خذوا به⁹⁰ حتى يبلغكم عن الحلي فخذوا بقوله. قال: ثم قال أبو عبد الله ع: إنا والله لا ندخلكم إلا فيما يسعكم. وفي حديث آخر: خذوا بالأحدث»⁹¹.

[55] يقول المؤلف: ولا خلاف أن أمر صاحب الزمان ع أولى بالاتباع لأنه أدري بحال شيعته ومواليه وما يصلحهم ويردبهم بحسب العلم والأطلاع، كما أخبر ع في توقيعه للمفيد رضي الله عنه بقوله: «نحن وإن كنا ثاوين بمكاننا النائي عن مساكن الظالمين إلى أن قال: فإننا نخطط علماً بأنبائكم ولا يعزب عنا شيء من أخباركم»⁹².

[56] وقد أجاب ع محمد بن عبد الله بن جعفر الحميري وقال في الجواب عن ذلك: «حديثان، أما أحدهما فإذا انتقل من حالة إلى أخرى فعليه التكبير، وأما الآخر فإنه روي أنه إذا رفع رأسه من السجدة الثانية وكبر ثم جلس ثم قام فليس عليه في القيام بعد القعود تكبير وكذلك التشهد يجري هذا المجرى، وبأيهما أخذت من باب التسليم وسعك وكان صواباً»⁹³.

[57] وقد تتبعنا كتب الأخبار من الكافي والفقيه والتهديب والاستبصار وقرب الإسناد والمحسن وبصائر الدرجات للمصنف والوسائل والوافي وبحار الأنوار وغيرها من مصنفات العامة والخاصة بالتكرار وما وجدنا في خبر ضعيف ولا صحيح فبحوى أو ظاهر أو نص أو صريح، أمراً بالرجوع⁹⁴ في ترجيح الأخبار المختلفة إلى المرححات العقلية الظنية والآراء والأنظار أو الرخصة فيما لم يرد فيه نص بالخصوص والعموم في إثبات الحكم بالإجتهاادات والإعتبار، وما رخصوا لأحد في فرد من أفراد القياس ولا بنوا على ذلك الأساس، بل أمروا بتراجيح محصورة معدودة في الأخبار، وعند فقدتها بالرد إلى الأئمة الأطهار والتثبت⁹⁵ والإرجاء في التعيين والتسليم عند الاختيار فكيف ساغ لمن رخص نفسه في التظني الترجيح بقواعد نحوية خلافية واستحسانات عقلية بل وهمية واعتبارات ظنية؟!

[58] قال قتيبة: «سأل رجل أبا عبد الله ع عن مسألة فأجابه فيها. فقال الرجل: رأيت إن كان كذا وكذا ما كان يكون القول فيها؟ فقال له: مه، ما أجبتك فيه من شيء فهو عن رسول الله، لسنا من رأيت في شيء»⁹⁶.

[59] في المحسن بالإسناد عن أيوب بن حر عن أبي عبد الله ع قال: «أنتم والله على دين الله ودين رسوله ودين علي بن أبي طالب وما هي إلا آثار عندنا من رسول الله⁹⁷ نكنزها»⁹⁸.

[60] وعن أبي بصير قال: «قلت لأبي عبد الله ع ترد علينا أشياء ليس نعرفها في كتاب الله ولا سنة نبيه فننظر فيها؟ فقال: لا، إنا أنك إن أصبت لم توجر وإن أخطأت كذبت على الله»⁹⁹.

90 B: بابه

91 الكافي، ج 1 ص 67

92 الخرائج والجرائح، ج 2 ص 902. This and the following passage are missing in B. There are also several discrepancies in A. See A, 5v6-r.

93 من باب A: كتاب الغيبة للطوسي، صص 378-379. كان ثواباً: C: التسليم كان صواباً

94 أمراً بالرجوع instead of الرجوع B:

95 B: التثبیت

96 الكافي، ج 1 ص 58

97 رسول ص: A:

98 المحسن، ج 1 ص 146

99 المحسن، ج 1 ص 213؛ الكافي، ج 1 ص 58

In the last report, Mu‘allā b. Khunays asks al-Ṣādiq, “If I hear of a report from an earlier Imam and then hear another from the most recent one, which one should I follow?” Al-Ṣādiq responds, “Abide by what you know until you receive further instructions from the living Imam and then abide by the latter. In any case, rest assured that we would never instruct you to do anything God deems unlawful.”³⁷

[55–56] Despite his occultation, Mīrā Muḥammad asserts, the twelfth Imam continues to guide his Shi‘a in matters of religion, particularly that which concerns with contradictory reports. The author cites two rescripts from the twelfth Imam in which the latter assures his followers that even in his concealment he is aware of their affairs. The Imam also explains that in cases where they encounter conflicting reports about a ruling, they are free to choose either of the two commands.³⁸

[57] Mīrā Muḥammad advances that the tools and techniques used by Uṣūlīs in their treatment of conflicting reports resemble Sunni methodologies which are unequivocally condemned by the Imams. None of the key Shi‘i hadith collections he consulted, Mīrā Muḥammad argues, contain a single report from the Imams, authentic or weakly-attested, ever encouraging Shi‘a to defer to their own independent judgments or use speculative tools such as analogical reasoning. In cases of ambiguity, they consistently encourage Shi‘a to abide by one of their instructions transmitted in the hadith and to defer judgment on what is the correct ruling until clarification from the Imams can be sought. Mīrā Muḥammad asks how one can claim from all of this that the sacred law authorises individuals to speculate their own independent views on religious and legal matters? Reliance on one’s own linguistic analysis of scripture or personal preferences is unreliable and highly subjective. The use of such methods cannot be considered acceptable or lawful. This argument is buttressed by citing six reports of the Imams:

[58] In one report, al-Ṣādiq admonishes a disciple who asks him to speculate on a matter. He says, “Far from us are we to ever offer our own personal opinions. I only answer your questions with what I know from God’s Messenger.”³⁹

[59] In another report he states, “By God, you are followers of the religion of God, his Messenger, and ‘Alī b. Abī Ṭālib. This religion is the Prophet’s legacy to us. We are only custodians who cherish and safeguard it.”⁴⁰

[60] It is also reported that al-Ṣādiq explains that those who rely on their personal opinions in religious matters are never prosperous, whether they are right or wrong. God is the only source of all commandments in the sacred law. He does not reward a person who independently guesses the correct ruling. As for the person who is wrong, he is guilty of lying about God and what constitutes the ruling of God.⁴¹

[61] وعن سماعة بن مهران عن أبي الحسن موسى¹⁰⁰ ع قال: «قلت: أصلحك الله إنّا نجتمع فنتذاكر ما عندنا فما يرد علينا شيء إلا وعندنا فيه شيء مستطر وذلك مما أنعم الله به علينا بكم. ثم يرد علينا الشيء الصغير ليس عندنا فيه شيء فينظر بعضنا إلى بعض وعندنا ما يشتبه فقيس على أحسنه. فقال: وما لكم وللقياس؟! إنّما هلك من هلك من قبلكم بالقياس. ثم قال: إذا¹⁰¹ جاءكم ما تعلمون فقولوا به وإن جاءكم ما لا تعلمون فيها - وأهوي بيده إلى فيه»¹⁰².

[62] قال أبو جعفر ع في حديث له طويل: «إنّ الله لم يفوض أمره إلى خلقه، لا إلى ملك مقرب، ولا إلى نبي مرسل، ولكنه أرسل رسولا من ملائكته. فقال له: قل كذا وكذا، فأمرهم بما يحب ونهاهم عما يكره» الحديث¹⁰³.

[63] وقال الرضا ع في حديث له طويل رواه الصدوق في العيون: «فما ورد عليكم من خبرين مختلفين فأعرضوهما على كتاب الله فما كان في كتاب الله موجودا حلالا أو حراما فاتبعوا ما وافق الكتاب، وما لم يكن في الكتاب فأعرضوا على سنن رسول الله ص، فما كان في السنة موجودا منها عنه نهي حرام ومأمورا به عن رسول الله ص أمر إزام فاتبعوا ما وافق نهي رسول الله ص وأمره، وما كان في السنة نهي إعافة أو كراهة ثم كان الخبر الأخير خلافه فذلك رخصة فيما عافه رسول الله ص وكرهه ولم يحرمه فذلك الذي يسع الأخذ بهما جميعا، وبأيهما شئت وسعك الاختيار من باب التسليم والاتباع والرد إلى رسول الله ص. وما لم تجدوه في شيء من هذه الوجوه فردوا إلينا علمه نحن أولى بذلك. ولا تقولوا فيه بآرائكم وعليكم بالكف والتثبت والوقوف وأنتم طالبون باحثون حتى يأتيكم البيان من عندنا»¹⁰⁴. قال شيخنا الحر العاملي: ذكر الصدوق ره أنّه نقل هذا من كتاب الرحمة لسعد بن عبد الله وذكر في الفقيه: أنّه من الأصول والكتب التي عليها المعول وإليها المرجع¹⁰⁵.

100 Missing in C.

101 ثم إذا قال D:

102 الكافي، ج 1 ص 57

103 تفسير العياشي، ج 1 ص 168;

الكافي، ج 8 صص 117-118

عيون أخبار الرضا، ج 2 صص 20-22

105 وسائل الشيعة، ج 27 ص 115؛ عيون أخبار الرضا، ج 2

صص 21-22؛ من لا يحضره الفقيه، ج 1 ص 3

[61] In another report, Samā‘a b. Mihrān admits to Mūsā al-Kāẓim that sometimes he will rely on analogical reasoning (*qiyās*) to resolve minor issues in which there does not seem to be any instructions from the Imam. Al-Kāẓim warns against using any form of analogical reasoning, even on minor issues. If one knows the ruling on a matter because of a general principle or specific instruction that an Imam has taught, then one can abide by that instruction. Otherwise, he should refrain from giving any personal opinion.⁴²

[62] Muḥammad al-Bāqir states in a long report that God never delegated legislative authority to an angel or prophet. No one but God may provide commandments and prohibitions in the sacred law.⁴³

[63] In a long report that al-Ṣadūq transmits from Sa‘d b. ‘Abdallāh al-Ash‘arī al-Qummī, ‘Alī al-Riḍā, the eighth Twelver Imam, instructs his followers on how to deal with conflicting reports and novel questions. He reiterates that some matters are uncomplicated: one should respect the authority of the Qur‘an and the Prophet in matters clearly identified as lawful or unlawful. In some cases the Prophet might express his disapproval of a thing in one report, but condone it in another. By tempering his disapproval with permission to engage in the activity, the Prophet is clarifying that the action is discouraged (*makrūh*) rather than unlawful (*ḥarām*). If one sees no instructions at all in regards to a subject, then one should refrain from offering any personal opinions, as noted in [61]. In those cases, al-Riḍā states, “Do not venture to offer your own personal opinion. It is your duty to remain steadfast to what you know to be true and to eschew any speculation. Withhold judgment and examine the subject until our teachings clarify the matter to you.”⁴⁴ While al-Riḍā’s instructions seem to refer to a living imam’s intervention, Mirzā Muḥammad would likely support the belief that such clarification may also come from a scholar’s discovery of a text or realisation of its relevance.

Endnotes

- 1 Usual references for his life are al-Khwānsārī, *Rawḍāt al-jannāt* (Tehran, 1392/1972), v. 7, pp. 127–146 and al-Tunikābunī, *Qīṣaṣ al-‘ulamā’* (Tehran, 1364Sh/1985), pp. 131–132. A full chronology of Mirzā Muḥammad’s life and adventures remains a desideratum in the field.
- 2 He records his birthdate as “Monday, 21st Dhū l-Qa‘da غنم – غنم corresponding to 1178AH (equivalent to 12th May 1765). See Akhhbārī, *Ṣaḥīfat al-ṣafā’*, fol. 256r (Majlis-e Shūrā-ye Islāmī Library, Tehran, MS #9487).
- 3 Muḥammad Ḥusayn Kāshif al-Ghiṭā’, *al-‘Abaqāt al-‘anbariyya* (Beirut, 1418/1998), p. 185.
- 4 There exists an uncritical edition (which appears to be a straightforward transcription of a manuscript) published in 1342/1923–24) in Najaf: in this edition, the work reaches 187 pages. After Kumail Rajani and Nebil Husayn completed the critical edition printed here, the Manshūrāt Dār al-Ḥusayn in Karbala published a new typeset of the 1923–24 Najaf edition and added a few references. That edition reaches 317 pages, with an introduction and notes.
- 5 Āghā Buzurg al-Ṭihrānī, *al-Kirām al-barara* (Beirut, 1430/2009), p. 205.
- 6 Āghā Buzurg al-Ṭihrānī, *al-Dharī‘a ilā taṣānīf al-Shī‘a* (Beirut, 1403/1983), v. 16, p. 105 #133. The bibliographical database *Fihristwāreh-ye dastnawishthāy-e Irān* (vol. 7, pp. 860–861) lists 16 manuscripts of this work housed in different libraries of Iran.
- 7 Al-‘Āmilī, *Sharḥ al-bidāya fī ‘ilm al-dirāya* (Qum, 1390Sh/2011), pp. 29–30; al-‘Āmilī, *Muntaqā l-jumān* (Qum, 1362Sh/1983), pp. 2–3.
- 8 Al-Sharīf al-Murtaḍā, *al-Dharī‘a ilā uṣūl al-sharī‘a* (Tehran, 1348Sh/1969), pp. 517–562; Ibn Idrīs al-Ḥillī, *al-Sarā’ir* (Qum, 1410/1989), v. 1, p. 47.
- 9 Al-Kulaynī, *al-Kāfī* (Tehran, 1407/1986), v. 8, p. 390.

- 10 Al-Kulaynī, *al-Kāfi*, v. 1, pp. 162–163; Ibn Bābawayh al-Ṣadūq, *al-Tawḥīd* (Qum, 1398/1977), pp. 410–411.
- 11 Al-Kulaynī, *al-Kāfi*, v. 1, p. 164; Ibn Bābawayh al-Ṣadūq, *al-Tawḥīd*, p. 412.
- 12 Qur'an 76:3.
- 13 Qur'an 41:17.
- 14 Al-Kulaynī, *al-Kāfi*, v. 1, p. 163; Ibn Bābawayh al-Ṣadūq, *al-Tawḥīd*, p. 411. For the exegetical gloss of *fa-hadaynāhum as bayyannā lahum*, see al-Qummī, *Tafsīr al-Qummī* (Qum, 1404/1983), v. 1, p. 360.
- 15 Qur'an 90:10.
- 16 Al-Kulaynī, *al-Kāfi*, v. 1, p. 163; Ibn Bābawayh al-Ṣadūq, *al-Tawḥīd*, p. 411.
- 17 Al-Kulaynī, *al-Kāfi*, v. 1, pp. 164–165.
- 18 Al-Kulaynī, *al-Kāfi*, v. 1, p. 177. For a close variant, see al-Ḥimyarī, *Qurb al-isnād* (Qum, 1413/1992), p. 351. The author adds the gloss *'alā l-umma*.
- 19 Al-Barqī, *al-Maḥāsin* (Qum, 1371/1951), v. 1, p. 236; al-Ṣaffār al-Qummī, *Baṣā'ir al-darajāt* (Qum, 1404/1983), p. 347; al-Kulaynī, *al-Kāfi*, v. 1, p. 178; Ibn Bābawayh al-Ṣadūq, *Kamāl al-dīn* (Tehran, 1395/1975), pp. 203–204.
- 20 Al-Kulaynī, *al-Kāfi*, v. 1, pp. 181–183; Ibn Bābawayh al-Ṣadūq, *Kamāl al-dīn*, p. 411.
- 21 Al-Ṣaffār, *Baṣā'ir al-darajāt*, p. 26; al-Kulaynī, *al-Kāfi*, v. 1, p. 183.
- 22 Ibn Bābawayh al-Ṣadūq, *Kamāl al-dīn*, p. 302; For a close variant, see al-Qummī, *Tafsīr al-Qummī*, v. 1, p. 359; al-Kulaynī, *al-Kāfi*, v. 1, p. 339.
- 23 Ibn Bābawayh al-Ṣadūq, *Kamāl al-dīn*, p. 122.
- 24 Al-ʿĀmilī, *Maʿālim al-dīn* (Qum, 1374/1954), p. 197; al-Sharīf al-Murtaḍā, *Rasā'il al-Murtaḍā* (Qum, 1405/1984), v. 1, pp. 3–96.
- 25 Al-Sharīf al-Murtaḍā, *Rasā'il al-Murtaḍā*, v. 3, pp. 312–313.
- 26 Al-Barqī, *al-Maḥāsin*, v. 1, p. 195; al-Kulaynī, *al-Kāfi*, v. 1, p. 23; v. 8, p. 268.
- 27 Al-Kulaynī, *al-Kāfi*, v. 1, p. 23; v. 8, p. 268. The hadith of the Prophet and al-Ṣādiq's statement appear together as a single report in *al-Kāfi*.
- 28 Al-Kulaynī, *al-Kāfi*, v. 1, pp. 172–173.
- 29 Al-Kulaynī, *al-Kāfi*, v. 1, p. 65.
- 30 Al-Kulaynī, *al-Kāfi*, v. 1, p. 65.
- 31 Qur'an 59:7; Al-Kulaynī, *al-Kāfi*, v. 1, pp. 63–64.
- 32 Al-Barqī, *al-Maḥāsin*, v. 1, p. 206; al-Kulaynī, *al-Kāfi*, v. 1, p. 43; Ibn Bābawayh al-Ṣadūq, *al-Amālī* (Tehran, 1376Sh/1998), p. 507.
- 33 Al-Barqī, *al-Maḥāsin*, v. 2, pp. 299–300.
- 34 Al-ʿAyyāshī, *Tafsīr al-ʿAyyāshī* (Tehran, 1380/1960), v. 1, pp. 12–13; Ibn Bābawayh al-Ṣadūq, *al-Khiṣāl* (Qum, 1362Sh/1984), p. 358.
- 35 Al-Barqī, *al-Maḥāsin*, v. 2, p. 335; al-Kulaynī, *al-Kāfi*, v. 1, pp. 65–66.
- 36 Al-Kulaynī, *al-Kāfi*, v. 1, p. 66.
- 37 Al-Kulaynī, *al-Kāfi*, v. 1, p. 67.
- 38 Qutb al-Dīn al-Rāwandī, *al-Kharā'ij wa-l-jarā'ih* (Qum, 1409/1988), v. 2, p. 902; al-Ṭūsī, *Kitāb al-ghayba* (Qum, 1411/1990), pp. 378–379. This passage [55–56] is missing in B. There are also several discrepancies in A. See A, fols. 5v–6r.
- 39 Al-Kulaynī, *al-Kāfi*, v. 1, p. 58.
- 40 Al-Barqī, *al-Maḥāsin*, v. 1, p. 146.
- 41 Al-Barqī, *al-Maḥāsin*, v. 1, p. 213; al-Kulaynī, *al-Kāfi*, v. 1, p. 58.
- 42 Al-Kulaynī, *al-Kāfi*, v. 1, p. 57.
- 43 Al-ʿAyyāshī, *Tafsīr al-ʿAyyāshī*, v. 1, p. 168; al-Kulaynī, *al-Kāfi*, v. 8, pp. 117–118.
- 44 Ibn Bābawayh al-Ṣadūq, *ʿUyūn akhbār al-Riḍā* (Tehran, 1378/1958), v. 2, pp. 21–22.

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CHAPTER 6

The Chapter on Analogy (*Qiyās*) from the *Ḥāshiyat al-Fuṣūl al-lu'lu'iyya* of Aḥmad b. 'Abdallāh Ibn al-Wazīr (d. 985/1577)

Sarah Islam and Jan Thiele

Introduction¹

The text presented in this chapter is a commentary upon Ṣārim al-Dīn Ibrāhīm b. Muḥammad al-Wazīr's (d. 914/1508) *al-Fuṣūl al-lu'lu'iyya*. Ṣārim al-Dīn al-Wazīr was a prominent Yemeni Zaydi scholar of his time.² His birth has, in most cases, been dated as 834/1431, although *Ṭabaqāt al-Zaydiyya al-kubrā*, an important bio-bibliographical source for Zaydi scholars, dates al-Wazīr's birth in 806/1403–4.³ Al-Wazīr's family descended from the founder of the Zaydi imamate in Yemen, al-Hādī ilā l-Ḥaqq (d. 298/911), and consequently also from the second Shi'i Imam al-Ḥasan (d. 50/670). While the sources do not specify the place of al-Wazīr's birth, it was suggested that he hailed from Ṣa'da, his father's hometown.⁴ This appears to be a likely hypothesis, considering that biographical reports relate that al-Wazīr received part of his education in the North Yemeni city. He later moved to Ṣan'ā', where he continued his studies.

Al-Wazīr studied theology and legal theory with numerous teachers. He studied not only Zaydi works, but also – with an Egyptian Shāfi'i scholar – al-Subkī's *Jam' al-jawāmi'*, Arabic language, applied law (*furū'*), Prophetic traditions as well as traditions of the Prophet's family (*Ahl al-bayt*), biographies of the Imams (*siyar*), exegesis and other disciplines.⁵ He is described as an outstanding scholar in the field of *ijtihād*⁶ and as a firm adherent of the doctrines of the Zaydi Imams.⁷ Another indication of his scholarly prominence is the number of students mentioned by biographical sources, which include the Imam Sharaf al-Dīn Yaḥyā b. Shams al-Dīn (d. 965/1558) and the Imam's son Aḥmad. Al-Wazīr died in Jumāda II 914/1508 in Ṣan'ā'.

Al-Wazīr was renowned for his contributions to the field of legal methodology,⁸ and *al-Fuṣūl al-lu'lu'iyya* – a commentary upon which is presented in this chapter – was his most important book in this field.⁹ He was also prolific in the field of Zaydi and Prophetic hadith, as well as related areas. In addition, he was the author of a commentary upon one of the most important works of Zaydi law, Imam al-Mahdī li-Dīn Allāh Aḥmad b. Yaḥyā b. al-Murtaḍā's (d. 840/1436–37) *Kitāb al-azhār*, entitled *Hidāyat al-afkār ilā ma'ānī l-Azhār fī fiqh al-a'imma al-aṭhār*.

Al-Fuṣūl al-lu'lu'iyya has survived in numerous manuscripts, and those we were able to consult (though not the originals, but in digital form) all contain extensive commentaries between the lines and in the margins. In the case of other manuscripts, which we were unable to check, we know from their descriptions in catalogues that they also contain interlinear or marginal commentaries. It is very likely that even in cases where catalogues do not mention any commentaries, the copies actually contain them: considering the lack of any standards for the description of manuscripts in our field, information offered by catalogue entries is often rudimentary and unsystematic. A list of the manuscripts of *al-Fuṣūl al-lu'lu'iyya* we were able to locate is provided below.

When we inspected a selection of copies of *al-Fuṣūl al-lu’lu’iyya*, we observed that the same interlinear or marginal notes were found in more than one manuscript. This means that they are not the individual comments, remarks, or explanations of the scribes or the readers of the specific manuscripts, but rather that these commentaries consist of textual material transmitted along with the basic work by al-Wazīr. In addition, there are at least three independent commentaries on *al-Fuṣūl al-lu’lu’iyya*, that have been attributed to specific authors: Luṭfallāh b. Muḥammad al-Ghiyāth’s (d. 1035/1625) *Sharḥ al-Fuṣūl*, al-Ḥasan b. ‘Alī b. Muḥammad al-Jalāl’s (d. 1079/1668–69) *Nizām al-fuṣūl* and Ṣalāḥ al-Dīn Ṣalāḥ b. Aḥmad b. al-Mahdī al-Mu’ayyadī’s (d. 1044/1635) *al-Darārī al-muḍī’a*.¹⁰

Finally, there is a fourth commentary, which to the best of our knowledge has been noticed so far only by Löfgren and Traini in their catalogue of the Arabic manuscript collection of the Ambrosiana Library in Milan: under the number 879 (ar. E 49) they record a *Ḥāshiya* on *al-Fuṣūl al-lu’lu’iyya* collected by Aḥmad b. ‘Abdallāh b. Ibrāhīm b. Muḥammad Ibn al-Wazīr (d. 985/1577).¹¹ Aḥmad b. ‘Abdallāh was Ṣārim al-Dīn al-Wazīr’s great-grandson and a scholar who was particularly renowned for his expertise in the field of Tradition – in this field, he wrote a work entitled *al-Aḥādīth al-mustaḥsana*.¹² We were unable to consult the Milan manuscript, but we identified three additional copies of the same work:

- 1) a MS from a private Yemeni library that was digitised by the Zayd b. ‘Alī Cultural Foundation¹³ (IZbACF no. 110–02, fols. 82a–137a – the metadata about the digital copy does not specify the original manuscript’s whereabouts, and we were unable to identify the codex with any of the manuscripts described in catalogues of private Yemeni manuscript libraries); fol. 82a has a marginal note that allows us to attribute this compilation to Aḥmad b. ‘Abdallāh Ibn al-Wazīr, and which reads *hādḥā kalām lil-faqīh Aḥmad b. ‘Abdallāh al-jāmi’ li-hādhihi al-ḥāshiya*;
- 2) MS Berlin, Staatsbibliothek, Glaser 180, where the title is given on fol. 1a as *Ḥāshiyat al-Fuṣūl li-mawlānā Ṣārim al-Dīn al-Wazīr* without indication of its compiler.¹⁴
- 3) MS Vienna, Austrian National Library, Glaser 61 is a manuscript of *al-Fuṣūl al-lu’lu’iyya* which has a copy of the *Ḥāshiya* in the margins.

Löfgren and Traini describe the *Ḥāshiya* as consisting of extracts from two commentaries abbreviated by the sigla د and م, the first of which they identify with al-Mu’ayyadī’s *al-Darārī al-muḍī’a*. In fact, the *Ḥāshiya* appears to include extracts from more than these two texts, considering the use of additional abbreviations for sources, including ض, و, ح, ع, ي, س and others. The *Ḥāshiya* does not copy the text of *al-Fuṣūl al-lu’lu’iyya* in its entirety. Rather, it quotes only the passages of *al-Fuṣūl* that are subject to remarks or explanations. These citations are introduced by the formula *qawluhu* and highlighted by the copyists in red ink. A large amount of the textual material from the *Ḥāshiya* is also found in the copies of *al-Fuṣūl al-lu’lu’iyya* in form of marginal and interlinear notes. Yet we have not found any copy of *al-Fuṣūl al-lu’lu’iyya* that contains precisely the same selection of commentaries in its margins and between the lines – with one exception: the abovementioned MS Vienna, Austrian National Library, Glaser 61, which is nonetheless a specific case. Whereas all other consulted manuscripts of *al-Fuṣūl al-lu’lu’iyya* place their scholia and notes either near the text upon which they comment or use specific cross-reference marks, this is not the case with Glaser 61. Here, the comments are written as running texts with precisely the structuring elements – headings (*bāb*) and subheadings (*faṣl*), and the introducing formula *qawluhu* – as found in the two other copies of the *Ḥāshiya*. We were unable to

consult the textual layout of MS Milan, Ambrosiana ar. C 37, that also contains Aḥmad b. 'Abdallāh Ibn al-Wazīr's collection of glosses, according to Löfgren and Traini.¹⁵

As mentioned by Ahlwardt in his catalogue entry, MS Berlin, Staatsbibliothek, Glaser 180 is incomplete, and the end of the text is missing.¹⁶ The text in IZbACF no. 110–02 ends on fol. 137a with a quotation from the chapter *bāb al-ijtihād* in *al-Fuṣūl al-lu'lu'iyya* and then marks the end of the commentary by *تمت*.¹⁷ This suggests that the *Hāshiya* was never completed: that is, it never covered the entire *al-Fuṣūl al-lu'lu'iyya*.

In the following, we will present a passage from the beginning of the chapter on analogy (*qi-yās*) from the *Hāshiya* (IZbACF no. 110–02, fols. 103a–b; MS Berlin, Staatsbibliothek, Glaser 180, fols. 116a–118a; MS Vienna, Austrian National Library, Glaser 61, fol. 133b). Before we turn to the text itself, we provide a list of manuscript copies of al-Wazīr's *al-Fuṣūl al-lu'lu'iyya* based on a survey of relevant catalogues of Zaydi manuscript collections; we indicate whenever we know that they contain marginal or interlinear notes and, for those manuscripts we were able to consult (marked with an asterisk), whether their marginal or interlinear notes partly overlap with the *Hāshiya*.

List of Manuscript Copies of al-Wazīr's *al-Fuṣūl al-lu'lu'iyya*

- 1) MS Munich, Bayerische Staatsbibliothek, Cod. arab. 1182, ZMT 00008; copied 918/1512; Sobieroj, *Arabische Handschriften der bayerischen Staatsbibliothek zu München unter Einschluss einiger türkischer und persischer Handschriften*, pp. 273–274, no. 124
- 2) MS Maktabat Muḥammad b. Yaḥyā b. 'Alī al-Dhārī, no. 793; copied 973/1565–66; al-Ḥibshī, *Fihris*, p. 330
- 3) MS Ṣan'ā', Maktabat al-Awqāf, no. 1627; copied ca. 982/1574–75; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 837
- 4) MS Ṣan'ā', al-Maktaba al-Gharbiyya 904; copied 1012/1604; according to the catalogue entry, it contains between the lines and in the margins the commentary 'known as *al-Jawāhir al-muḍī'a fi kashf ma'āni l-Fuṣūl al-lu'lu'iyya*', which is in all likelihood al-Mu'ayyadī's commentary entitled *al-Darārī al-muḍī'a*; 'Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi' al-Kabīr – Ṣan'ā'*, v. 1, p. 447
- 5) MS Ṣan'ā', al-Maktaba al-Gharbiyya 852; copied 1022/1613; 'Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi' al-Kabīr – Ṣan'ā'*, v. 1, p. 447
- 6) MS Ṣan'ā', Maktabat al-Awqāf, no. 1502; copied 1022/1613; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 841
- 7) *MS Maktabat Āl Hāshimī, no. 163, ZMT 01235, IZbACF 121–03; copied 1032/1623; contains marginal notes, which do not overlap with our *Hāshiya*; al-Wajih, *Maṣādir*, v. 1, p. 362 (here erroneously dated 1037 AH); digital images: <https://w3id.org/vhmmml/readingRoom/view/144359>
- 8) MS Milan, Ambrosiana ar. C 111; copied 1039/1630; Löfgren, and Traini, *Catalogue*, v. 2, p. 176, no. 367
- 9) MS from unidentifiable private Yemeni library, IZbACF 436–02;¹⁸ copied 1042/1633
- 10) MS Ṣan'ā', Maktabat al-Awqāf, *Majāmi'* 87, fols. 22–113; copied 1044/1635; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 839
- 11) MS Ṣan'ā', Maktabat al-Awqāf, no. 1435; copied 1047/1638; marginal and interlinear notes; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 838

- 12) MS Milan, Ambrosiana F 38; copied 1051/1641; contains ‘some glosses’; Löfgren, and Traini, *Catalogue*, v. 4, p. 16, no. 1333
- 13) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1440; copied 1051/1641; marginal and interlinear notes al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 839
- 14) MS Milan, Ambrosiana ar. D 536:1; copied 1051/1641; with commentaries; Löfgren, and Traini, *Catalogue*, v. 2, pp. 400–401, no. 792
- 15) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1441; copied 1052/1643; al-Ruqayḥī, et al., *Fihrist*, v. 2, pp. 839–840
- 16) MS Milan, Ambrosiana ar. D 537:3; copied 1053/1643; Löfgren, and Traini, *Catalogue*, v. 2, p. 401, no. 793
- 17) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1442; copied 1058/1648; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 840
- 18) *MS Berlin, Staatsbibliothek, Glaser 68, ZMT 00736; copied 1060/1650; extensive marginal and interlinear notes that partly overlap with the *Ḥāshiya*; Ahlwardt, *Kurzes Verzeichniss*, 13, Ahlwardt, *Verzeichniss*, v. 4, p. 327, no. 4941; digital images: https://digital.staatsbibliothek-berlin.de/werkansicht?PPN=PPN732723744&view=overview-toc&DMDID=DM-DLOG_0001&PHYSID=PHYS_0177
- 19) MS Maktabat Ḥammūd Muḥammad Sharaf al-Dīn, no. 3; copied 1060/1650; al-Wajīh, *Maṣādir*, v. 2, p. 352
- 20) MS London, British Library, Or. 3795; copied 1062/1652 from a transcript of the autograph; Rieu, *Supplement to the Catalogue of the Arabic Manuscripts in the British Museum*, pp. 175–176, no. 267
- 21) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1439; copied 1062/1652; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 839
- 22) MS Ṣan‘ā’, al-Maktaba al-Gharbiyya 851; copied 1064/1654; ‘Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi‘ al-Kabīr – Ṣan‘ā’*, v. 1, p. 447
- 23) MS Ṣan‘ā’, al-Maktaba al-Gharbiyya 850; copied 1065/1654; interlinear comments and in the margins; ‘Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi‘ al-Kabīr – Ṣan‘ā’*, v. 1, p. 446
- 24) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1434; copied 1066/1656; scattered marginal notes; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 838
- 25) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1445; copied 1071/1661; marginal and interlinear notes; al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 840
- 26) MS Milan, Ambrosiana ar. C 37; copied 1072/1662; extensive glosses in the margins and on fols. 18b, 21b, 23a, 24a–b, 32a, 35a–b, 47a, 52b, 60b, 65a, 68b, 87b, 91b, 92b, 95a, 97b, 107a–b, 118b, 122–123a; these commentaries are by different authors and were collected by al-Wazīr’s grand-nephew Aḥmad b. ‘Abdallāh b. Aḥmad Ibn al-Wazīr; Löfgren, and Traini, *Catalogue*, v. 2, p. 145, no. 293
- 27) MS Maktabat Āl Hāshimī, no. 161:3, fols.?: copied 1073/1662–63; al-Wajīh, *Maṣādir*, v. 1, p. 361
- 28) MS Maktabat Muḥammad ‘Abd al-‘Azīm al-Hādī, no. 175; copied 1073/1662–63; al-Wajīh, *Maṣādir*, v. 1, p. 479
- 29) MS Maktabat Muḥammad ‘Abd al-‘Azīm al-Hādī, no. 174; copied 1077/1666–67; al-Wajīh, *Maṣādir*, v. 1, p. 479

- 30) MS Şan'ā', al-Maktaba al-Gharbiyya 903; copied 1077/1667; 'Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi' al-Kabīr – Şan'ā'*, v. 1, p. 447
- 31) *MS Şan'ā', Maktabat Muḥammad b. Muḥammad al-Kibṣī, IZbACF 264–02 (only metadata, digital images contain other MS), ymdi_03_44; copied 1079/1669; with marginal and interlinear commentaries that overlap with our *Ḥāshiya*; al-Wajīh, *Maṣādir*, v. 1, p. 230, no. 79; digital images: <http://arks.princeton.edu/ark:/88435/1544bq37z>
- 32) MS Şan'ā', al-Maktaba al-Gharbiyya 1230; copied 1093/1682; commentaries in the margins and between the lines; 'Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi' al-Kabīr – Şan'ā'*, v. 1, pp. 447–446
- 33) *MS Munich, Bayerische Staatsbibliothek, Cod. arab. 1180, ZMT 00006; copied 1097/1686; extensive marginal and interlinear notes that partly overlap with the *Ḥāshiya*; Sobieroj, *Arabische Handschriften der bayerischen Staatsbibliothek zu München unter Einschluss einiger türkischer und persischer Handschriften*, pp. 270–271, no. 122; digital images: http://daten.digital-sammlungen.de/bsb00118344/image_151
- 34) *MS Vienna, Austrian National Library, Glaser 36, ZMT 00285; codex includes a poem dated 1141/1729 and a reader's note dated 1070/1660; comparatively few marginal notes that do not appear to overlap with our *Ḥāshiya*; Grünert, *Kurzer Katalog*, p. 31, no. 99; digital images: <https://www.vhmml.org/readingRoom/view/141698>
- 35) *MS Munich, Bayerische Staatsbibliothek, Cod. arab. 1181, ZMT 00007; copied 1088/1677 or 1188/1774; extensive marginal and interlinear notes that partly overlap with the *Ḥāshiya*; Sobieroj, *Arabische Handschriften der bayerischen Staatsbibliothek zu München unter Einschluss einiger türkischer und persischer Handschriften*, pp. 271–273, no. 123; digital images: http://daten.digital-sammlungen.de/bsb00118345/image_148
- 36) MS Maktabat Ḥammūd Muḥammad Sharaf al-Dīn, no. 32:1, fols.?: copied 1091/1680–81; al-Wajīh, *Maṣādir*, v. 2, p. 326
- 37) MS Şan'ā', Maktabat Banī Ḥāshish, no. 89; copied 1113/1701–2; al-Ḥibshī, *Fihris*, p. 51
- 38) MS Maktabat 'Alī b. Ibrāhīm, no. 177; copied 1113/1701–2; al-Ḥibshī, *Fihris*, p. 90
- 39) *MS Vienna, Austrian National Library, Glaser 61, ZMT 00310; reader's notes dated 1193–1194/1779–1780; this manuscript contains a copy of the *Ḥāshiya* in the margin; Grünert, *Kurzer Katalog*, p. 31, no. 100; digital images: <https://www.vhmml.org/readingRoom/view/141723>
- 40) MS Maktabat Majd al-Dīn al-Mu'ayyadī, no. 32; copied 1217/1802–3; al-Wajīh, *Maṣādir*, v. 2, p. 244
- 41) *MS Maktabat Majd al-Dīn al-Mu'ayyadī, IZbACF 166–05, fols. 8b–96b; copied 1354/1935; extensive marginal and interlinear notes, specifically at the beginning of the copy, and partly overlapping with our *Ḥāshiya*
- 42) MS Şan'ā', al-Maktaba al-Gharbiyya 847; not dated; extensive commentaries in the margins and between the lines; 'Īsawī, et al., *Fihris al-makḥṭūṭāt al-Yamaniyya li-Dār al-Makḥṭūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmi' al-Kabīr – Şan'ā'*, v. 1, p. 447
- 43) MS Milan, Ambrosiana ar. F 39, fols. 5a–197a (under the alternative title *al-Fuṣūl al-jāmi' li-aqwāl al-rasūl fī 'ilm al-uṣūl*); not dated; Löfgren, and Traini, *Catalogue*, v. 4, p. 16, no. 1334

- 44) *MS from unidentifiable private Yemeni library, digitised copy IZbACF 110–02, fols. 1a–82b; incomplete at the end; extensive marginal and interlinear notes that partly overlap with the *Ḥāshiyā*.
- 45) *MS from unidentifiable private Yemeni library, digitised copy IZbACF 303–02, incomplete at the end; marginal and interlinear notes that partly overlap with the *Ḥāshiyā*.
- 46) MS from unidentifiable private Yemeni library, IZbACF 529–02¹⁹
- 47) *MS Maktabat Muḥammad b. Aḥmad b. ‘Alī b. Ḥusayn al-Mutawakkil, digitised copy IZbACF 558–03; the date of the copy was possibly specified in the missing lower half of the last page; transcript of the autograph; extensive marginal and interlinear notes that partly overlap with the *Ḥāshiyā*.
- 48) MS Maktabat ‘Abdallāh al-Sa‘dī, no. 1:1, fols.?.; not dated; al-Wajīh, *Maṣādir*, v. 2, p. 133
- 49) MS Maktabat Muḥammad b. al-Ḥasan b. ‘Abdallāh al-Qāsim, no. 60; not dated; al-Wajīh, *Maṣādir*, v. 2, p. 188
- 50) MS Maktabat al-Murtaḍā b. ‘Abdallāh al-Wazīr, no. 108:3, fols.?.; not dated; al-Wajīh, *Maṣādir*, v. 2, p. 400
- 51) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1436; not dated; al-Ruqayhī, et al., *Fihrist*, v. 2, p. 838
- 52) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1444; not dated; al-Ruqayhī, et al., *Fihrist*, v. 2, p. 440
- 53) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1443; not dated; marginal and interlinear notes; al-Ruqayhī, et al., *Fihrist*, v. 2, p. 837
- 54) MS Ṣan‘ā’, Maktabat al-Awqāf, no. 1459, fols. 250–336; not dated; al-Ruqayhī, et al., *Fihrist*, v. 2, p. 841
- 55) MS Milan, Ambrosiana ar. B 85, fols. 1–118a; not dated; Löfgren, and Traini, *Catalogue*, v. 2, p. 102, no. 209

In his *Ḥāshiyat al-Fuṣūl al-lu’lu’iyya*, Aḥmad b. ‘Abdallāh writes a commentary on the work of Ṣārim al-Dīn al-Wazīr (d. 914/1508), *al-Fuṣūl al-lu’lu’iyya*, a Zaydi legal text summarising the basic principles of *uṣūl al-fiqh*. In his commentary, Aḥmad b. ‘Abdallāh explains points of interpretive disagreement among the schools of law and clarifies linguistic and terminological details of genre-specific vocabulary introduced by al-Wazīr in *al-Fuṣūl*. The brevity of *al-Fuṣūl*, coupled with the commentary’s focus on foundational explanations in lieu of arcane detail, leads us to believe that these texts were written for teaching purposes.

We focus here on the first section of his chapter on analogy (*qiyās*). For the sake of clarity, we first present the base text as written in *al-Fuṣūl*. We have translated the base text as closely to the Arabic as possible; however we have re-arranged sentences and inserted material as needed in order to make the passage more readable in English. Thereafter we present the commentary, referring to the base text as needed, as done by Aḥmad b. ‘Abdallāh. In lieu of translating the commentary directly, we have opted to summarise and provide additional detail where needed, to provide the reader substantive clarity.

وما كان من الكتب مضبوطاً مختصفاً والعناية فيه ظاهرة من الألبه وغالبه
خطوطهم واجاب انهم المنقذون قد تباينوا في قولهم فيه احوال من غيره
واعظم وجادة ووقت عليها واحلها كتاب الجامع الكافي في المذهب الشريف
مس **قوله** عندنا كذا الامام الميرزا محمد بن سليمان وص بالله والمطهر بن محمد
وولده محمد بن المطهر والامام علي كل منهم نص على ذلك باسم خلافاً لمعظم المجتهدين و
بعض الفقهاء نفعني **قوله** ٧ لروايه لا يخفى عليه **قوله** صدقنا اي بصريح قوله
كان يقول هذا خطي فان ودهني هو **قوله** ١٠ وبقرينه نحو المقود للشيخ
في مجلس المنبرين بل يقول احبني لان الاخبار قد يكون بالكنايه الثامنه
الاجازة هي طريق مختصرة وبما عمل ائمتنا ورايت في كتاب المناقب لابي جعفر
محمد بن سليمان الكوفي الذي صنفه سنة ثلثمائة من الهجرة اجازة وامر من حار
مشافه ان يرويه عنه لانه كف بصره ربح وقد خلط في كتاب السماع الاخبار في السماع
والمناولة وروي احاديث كثيرة سببها ثابت بطريق الوجاهة **قوله** خلافاً لابي
خليفة قال من سمعته ابا ذر عبد بن احمد المروزي يقول لو صنعت الاجازة
بطلب الرحلة من من تاريج بن خلكان من ترجمه من **قوله** لجميع الامة كما يجوز
للوجود المعين على ما تقدم **قوله** لسفل فلان دون غيرهم من الموجودين
قوله خلافاً بينغ الباقين وابواب طيب الاجازة لمن يوجد من سفل فلان
قوله ومنها المناولة قال في الجامع وتتمى لعرض اي عرض المناولة ثم تنفخ
هذه الطريقة معتمد عند ائمتنا وقد روي ابو جعفر في كتاب المناقب احاديث
كثيرة بالمناولة وهي اجازة مخصوصة في شئ معين **قوله** فلا يجوز
ان له الرواية فلانه لا يعلم الكذب او محوره واما العمل فلا يجوز لعقد الظن
عند **باب** **القبائل**
هذا باب جليل في الدين يعني عليه اكثر المسائل وقد افرد الامام في له كما باسماء
القبائل والجويني كما باسماء البهات والغزالي كما باسماء شفا الغليل واخرون
لم يفردها له كذا بالكنههم بالعوا في الكلام فيه **قوله** وقياس الطرد
قال ابو عبد والمزكلمون ايضا يسمونه قياش الطرد وليس المراد بالطرده المحمودة

Figure 6.1 MS Staatsbibliothek, Glaser 180, Berlin, fol. 116a

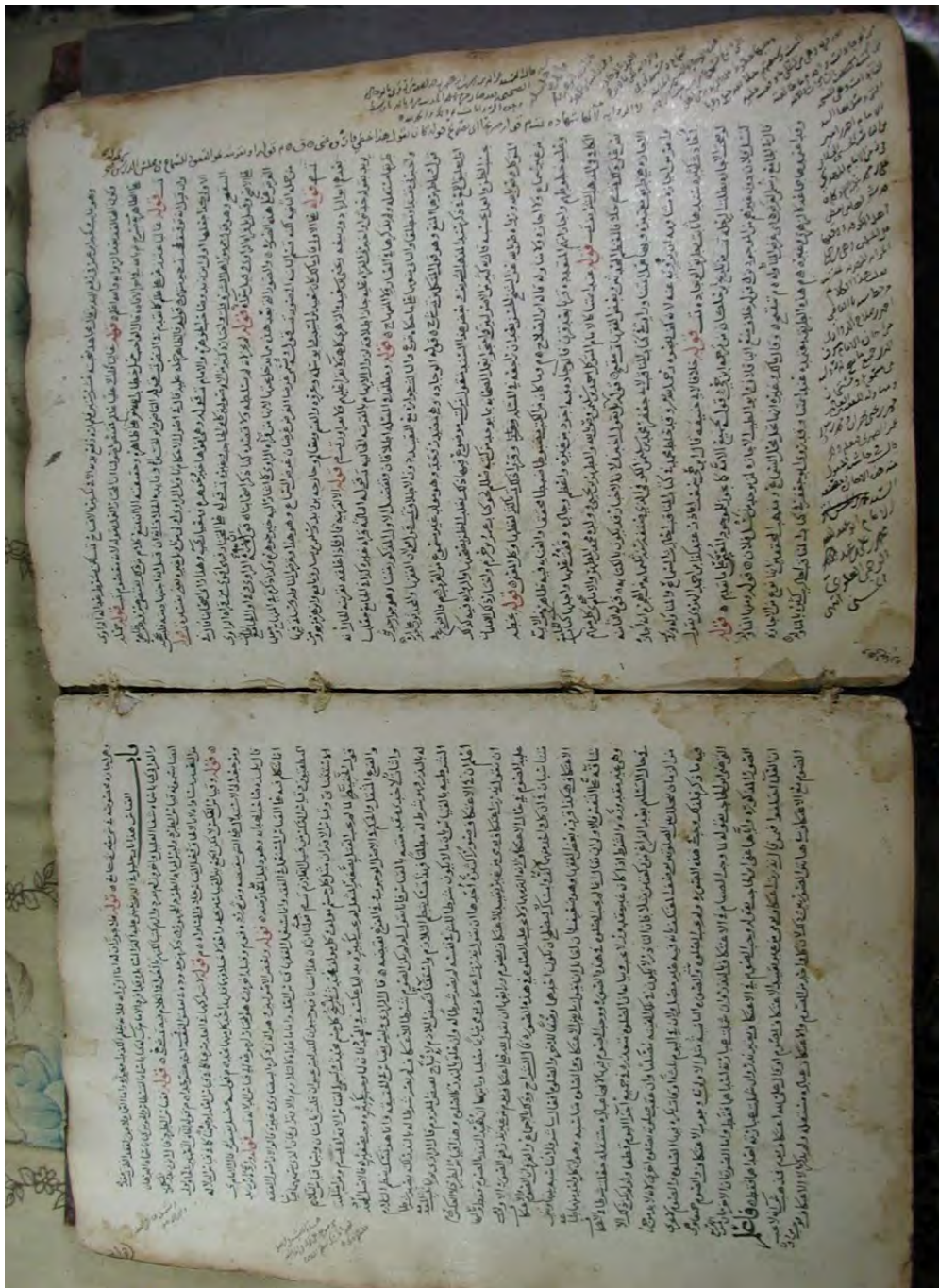


Figure 6.2 MS private Yemeni library, Ṣan'ā' (IṢBACF, #110-02), fols. 102b-103a

الفصول اللؤلؤية

السيد صارم الدين إبراهيم بن محمد الوزير م 914هـ

باب القياس

هو في اللغة التقدير والمساواة. وأما في الاصطلاح، فقياس الطرد إلحاق فرع بأصل في حكمه لاشتراكهما في العلة في نظر المجتهد. ولا يلزم المخطئة زيادة القيد الأخير بخلاف المصوبة لأن قياسه صحيح عندهم وإن تبين الغلط والرجوع. وقياس العكس تحصيل نقيض حكم الأصل في الفرع لاقتراقهما في علة الحكم، كقول أصحابنا والحنفية: لما وجب الصوم في الاعتكاف بالنذر وجب بغير نذر قياساً على الصلوة فإنها لما لم يجب فيه النذر لم يجب بغير نذر. وقبله الجمهور وهو المختار، وردّه ابن زيد وبعض الأصوليين. فإن أريد جمعهما بحدّ واحد قيل: تحصيل مثل حكم الأصل أو نقيضه في الفرع لاشتراكهما في علة الأصل أو لاقتراقهما فيها.

The Chapter on Analogy (*Qiyās*)

Linguistically, analogy (*qiyās*) is defined as comparison (between two things) and measurement (of two things). As for terminological definitions, we have (two specific types of analogy):

- 1) Co-presence²⁰ (*qiyās al-ṭard*) is the attachment of a judgment (*ḥukm*) governing a principal case (*aṣl*) to a derived case (*far‘*) due to the jurist’s deduction that both cases share the same occasioning factor (*‘illa*) with respect to the judgment (*ḥukm*) in question. The *mukhaṭṭi’a* (those who believe that only one juridical opinion could be correct in corresponding with God’s ruling on a given issue and that all other opinions were erroneous) do not require the inclusion of the last clause, “due to the jurist’s deduction.” This is in contrast to the *muṣawwiba* (those who believe that the opinion of every *mujtahid* is correct, with God’s ruling corresponding to each *mujtahid*’s position). This is because in their view the analogical reasoning (*qiyās*) of the *mujtahid* is valid (so long as he has applied his reasoning to the best of his ability), even if he later realises his ruling was erroneous and hence retracts it.
- 2) Co-absence²¹ (*qiyās al-‘aks*) is a type of reasoning whereby the converse of the judgment (*ḥukm*) of a principal case (*aṣl*) is applied to the derived case (*far‘*), due to both cases having differing or opposing occasioning factors (*‘ilal*). An example mentioned by Zaydi and Ḥanafī jurists is the case of fasting (*ṣawm*) during the vowed *i’tikāf* (*al-i’tikāf bi-l-nadhr*).²² Ritual prayer (*ṣalāh*) is not deemed a necessary condition for the validity of *i’tikāf* more generally because it has not been stipulated as such for the vowed *i’tikāf*. Extending this principal case (*aṣl*) of ritual prayer to the derived case (*far‘*) of fasting, the same occasioning factor (*‘illa*) is not present. It has been determined that fasting is a necessary condition for the validity of the vowed *i’tikāf*. Applying the converse of the principal case (*aṣl*), this implies that since fasting is a necessary condition for the vowed *i’tikāf*, it must also be that fasting is a necessary condition for *i’tikāf* more generally. This is the view of the majority [in our school], and it is also the view we choose; however Ibn Zayd and some of the Uṣūlīs refute this.
- 3) If we were to combine both into one definition, we would say: the application of the same ruling or its converse, of the principal case, to the derived case, due to their sharing the same or having different occasioning factors.

In this short passage al-Wazīr makes his views apparent on three issues. First, similar to the Sunni jurists he cites – and contrary to the Twelvers – he considers *qiyās* to be a valid juridical tool of interpretation. Second, the disagreement between the *mukhaṭṭi’a* – namely the Twelvers – and *muṣawwiba* – namely the Zaydis and majority of Ḥanafīs, Mālikīs, and Shāfi‘īs – on whether the judgment of every *mujtahid* is correct, versus the existence of only one empirically correct judgment in alignment with God’s Will, is a significant fissure in *uṣūl* debates that will affect subsequent conversations. Third, co-presence (*qiyās al-ṭard*) and co-absence (*qiyās al-‘aks*) are both valid forms of analogical reasoning (*qiyās*). While they can be combined into one singular idea, they are sufficiently distinctive such that they are best treated as different sub-types of analogical reasoning (*qiyās*). The recognition of co-absence (*qiyās al-‘aks*) was an enormously controversial issue among jurists, yielding extensive debate between those who favoured and opposed its validity. Hence, as we will see, Aḥmad b. ‘Abdallāh cites the two prominent Shāfi‘ī jurists Abū Ḥāmid al-Ghazālī (d. 505/1111) and Abū l-Ma‘ālī al-Juwaynī (d. 478/1085) in support of al-Wazīr’s general position on *qiyās*. However, on the more specific matter of co-absence (*qiyās al-‘aks*), al-Juwaynī does not consider it be a valid form of analogical reasoning while al-Ghazālī does.

In what follows, **bold text** is the base text, *al-Fuṣūl al-lu'lu'yya* of Ibn al-Wazīr; the remainder is Aḥmad b. 'Abdallāh's commentary. Western Arabic numerals ([1], [2] etc.) mark sections in the *Hāshiyat al-Fuṣūl al-lu'lu'yya*.

حاشية الفصول اللؤلؤية

أحمد بن عبد الله بن إبراهيم بن محمد ابن الوزير م 985هـ

باب القياس

[1] هذا باب جليل في الدين يبتني عليه أكثر المسائل، وقد أفرد الإمام ي¹ له كتاباً سماه القسطاس،² والجويني كتاباً سماه البرهان، والغزالي كتاباً سماه شفاء الغليل، وآخرون لم يفردوا لهم كتباً³ لكنهم بالغوا في الكلام فيه تمت
ض ع هـ.

[2.1] قوله بقياس⁴ الطرد قال ابن⁵ زيد والمتكلمون أيضاً يسمونه قياس الطرد، وليس المراد الطرد المهجور⁶ هـ.

[2.2] ذكر من حدوده في تعليق الفقيه ق أحد عشر حداً هـ م.

[3] قوله إلحاق التعبير بإلحاق⁷ أولى من التعبير بمساواة لأن الإلحاق فعل القياس⁸ بخلاف المساواة⁹ هـ م.

1 V: يحيى

2 V: القسطاس

3 B, V: له كتاباً

4 B: وقياس

5 B: أبو

6 Y, B: المهجور; V: + وقد

7 B: بالإلحاق

8 V: القائس

9 B: + تمت

Commentary

In writing this commentary, Aḥmad b. ‘Abdallāh provides additional detail to clarify al-Wazīr’s intended meaning, especially in those instances in which specific statements could be mis-interpreted without additional explanation. Such a concern would be especially relevant in a teaching context. In so doing, Aḥmad b. ‘Abdallāh also earmarks the major distinguishing points of Zaydi thought on the controversial status of *qiyās* and its sub-categories vis-à-vis the Twelvers and the Sunni schools of law.

[1] Among the Twelvers, theoretically *qiyās* was considered too uncertain an interpretive tool to be used with authority. Despite their Shi‘i affiliation, the Zaydis – who were heavily influenced by Ḥanafī legal theory – adopted the position of the Sunni legal schools of the validity of *qiyās*. Hence, we find Aḥmad b. ‘Abdallāh beginning his commentary by praising the significant status of *qiyās* in legal interpretation and pointing to its ubiquitous usage. He also lists examples of well-known jurists who engaged in prolific discussion on it, including al-Juwaynī in his book *al-Burhān fī uṣūl al-fiqh*, al-Ghazālī in his book *Shifā’ al-ghalīl*, and Zaydi Imam al-Mahdī li-Dīn Allāh Aḥmad b. Yaḥyā b. al-Murtaḍā (d. 840/1436–37) in his book *al-Qistās al-mustaqīm*.

[3] Jurists across the schools of law debated on the specifics of how exactly to define *qiyās* as a legal term, often commenting on two divisive issues in their introductory sections. First, did *qiyās* as defined in *uṣūl* encompass various forms of legal analogical reasoning and syllogistic reasoning – such as what might be found in formal logic (*manṭiq*) – as most Ḥanafīs believed? Or was *qiyās* pointing only to one narrowly defined legal procedure that adopted a specific type of analogical reasoning in its application, as many Shāfi‘is opined? Second, was *qiyās* referring to a specific type of action pursued by the *mujtahid* as the Ḥanafīs believed, or was it an empirical truth that existed outside of human activity that the *mujtahid* was tasked to find, as many Shāfi‘is claimed? Aḥmad b. ‘Abdallāh expands on the first issue in later passages [7–8.1], noting al-Wazīr’s preference for the former. As for the second issue, in discussing the linguistic definition of *qiyās*, he notes that “comparison is a more accurate definition than measurement, because comparison encapsulates the actual function that *qiyās*, undertakes as a legal interpretive tool, unlike what is implied by measurement.” In noting the preference for comparison over the oft-used term among the Shāfi‘is of measurement, Aḥmad b. ‘Abdallāh is demonstrating al-Wazīr’s preference for the former approach of the Ḥanafīs to define *qiyās* as an action within the realm of human activity.

[2] Aḥmad b. ‘Abdallāh then moves on to the topic that was of prime importance to al-Wazīr in this chapter: the defense of co-absence (*qiyās al-‘aks*) as a valid sub-category of *qiyās* both intrinsically and separate from co-presence (*qiyās al-ṭard*). Jurists disagreed on whether co-absence (*qiyās al-‘aks*) and co-presence (*qiyās al-ṭard*) could be deemed valid forms of *qiyās*. Co-presence (*qiyās al-ṭard*) referred to the idea that when a specific judgment was operative in a case, another feature co-existed in a correlative fashion in that case as well. That co-existing feature was the occasioning factor for that judgment. Co-absence (*qiyās al-‘aks*) implied that the opposite was also true: when a specific judgment was not operative, then its corresponding feature was also not present in the case. An example would be the cases of wine and vinegar made from wine. Wine is forbidden while vinegar made from wine is permitted. Since the feature of intoxication was present in wine but disappeared with its conversion into vinegar, one could deduce that the occasioning factor for the prohibition of wine was in fact its intoxicating quality. Some jurists considered this line of reasoning to be air-tight, or at the very least probabilistic. Those who deemed it invalid argued that multiple features could correlate with the presence of a given

- [4] قوله لاشتراكهما في العلة صريحاً كما في قياس العلة أو ضمناً كما في قياس الدلالة هـ.
- [5] قوله وقياس العكس لا يمكن الجمع بين القياسين بحد واحد لاختلافهما، فلهذا حدّ كل واحد¹⁰ منهما بحد هـ م.
- [6] قوله¹¹ تحصيل نقيض إنخ قال الإمام ي¹² ومرجعه إلى الاستدلال على الشيء بنقيضه، ومن ثم رده قوم وقبلة آخرون، وهو المختار لرجوعه إلى قياس الدلالة تمت.
- [7] قوله وردّه ابن زيد قال تلميذه صاحب الهداية وهو دليل المعارضة¹³ هـ.
- [8.1] قوله وبعض الأصوليين وهو الذي ذكره البيضاوي وغيره. قالوا لأن أصول الفقه إنما يتكلم فيه على القياس المستعمل¹⁴ في الفقه وإنما يستعمل الفقهاء قياس العلة، وأما ما عداه كالتلازم¹⁵ والاقتراني فإن الذي يسميهما قياساً المنطقيون وقياس العكس من قبيل التلازم تمت م.

10 Missing in B.

11 Missing in B.

12 Missing in V.

13 B: المقارضة

14 V: والمستعمل

15 B: كالتلازم

judgment without having the causal force of being the occasioning factor for that judgment. In the case above, wine was both intoxicating and had a distinctive smell. Both features changed with its conversion to vinegar, so how could one deduce with absolute certainty which of the two was the occasioning factor? In such a case, these jurists argued that without weightier evidence, co-presence (*qiyās al-ṭard*) alone was insufficient to single out one feature as the occasioning factor. Co-absence (*qiyās al-‘aks*) in their view was even weaker a premise since this process entailed the void or absence of a specific feature. In such a case, the question of what feature was missing was an exercise of conjecture.

In legitimising the existence of both sub-categories, Aḥmad b. ‘Abdallāh comments on the terminological usage of co-presence (*qiyās al-ṭard*), noting that jurists holding alternate perspectives such as Ibn Zayd and the scholastic theologians (*mutakallimūn*) used the same term. He clarifies that in their use of *qiyās al-ṭard*, “they do not intend the other category, *al-ṭard al-mahjūr*, the explicitly articulated *qiyās*, a type of analogical reasoning that is mentioned as one of eleven definitions [of *qiyās*] in jurists’ commentaries.” [2.2] One might imagine that demonstrating the common usage of this term as al-Wazīr defines it only serves to solidify his argument that co-presence (*qiyās al-ṭard*) is in fact a separate type of *qiyās*.

[4] Moving on to the definition of *qiyās al-ṭard*, he clarifies what al-Wazīr meant by “both cases sharing the same occasioning factor,” noting that “this would apply whether the occasioning factor were apparent and known, like the case of *qiyās* with an explicitly mentioned textual occasioning factor (*qiyās al-‘illa*)²³, or if it were tacit, like the case of *qiyās* with an inferred occasioning factor (*qiyās al-dalāla*)²⁴.” The fact that co-presence (*qiyās al-ṭard*) retains attributes very similar to other well-recognised categories of *qiyās*, he opines, lends credence to its validity.

[5–6] Moving on to co-absence (*qiyās al-‘aks*), he explains al-Wazīr’s partitioning it from co-presence (*qiyās al-ṭard*), asserting that “combining the two types of *qiyās* into one definition is not possible due to their clear categorical differences, hence each of the two categories is best defined in isolation of the other.” Aḥmad b. ‘Abdallāh understands al-Wazīr’s definition of the rule to be “the application of the converse of a rule of a case to another case.” Leaning on previously articulated arguments, he asserts that since this procedure entails the inference of a judgment by knowledge of its opposite, this necessarily falls within the purview of a type of analogical deduction and hence should appropriately be considered *qiyās*. Acknowledging juridical disagreement on its status, he asserts that he chooses “to agree with those who accept it [as a valid category], given its traceability (and hence similarity) to *qiyās al-dalāla*.”

[7–8.1] On what basis then, did jurists like Ibn Zayd adopt an opposing view? In responding to this, Aḥmad b. ‘Abdallāh reverts back to answering the question of whether *qiyās* encompassed various forms of legal and non-legal reasoning (in lieu of functioning as one narrowly defined legal procedure). Borrowing from the Shāfi‘ī Nāṣir al-Dīn ‘Abdallāh b. ‘Umar al-Bayḍāwī (d. between 699 and 705/1299 and 1306), he explains that those who took the opposing view argued that “*uṣūl al-fiqh* only speaks of *qiyās* as it is operationalised in *fiqh* and employed by jurists in a legal context.” Hence, they deemed *qiyās al-‘illa* to largely be the one legitimate form of *qiyās*. As for other non-legal types of *qiyās* – such as the conditional hypothetical syllogism (*qiyās al-talāzum*) and conjunctive syllogism (*al-qiyās al-iqtirānī*) – while logicians deemed these to be types of *qiyās* and jurists like al-Wazīr concurred, Ibn Zayd would not recognise them as such within the realm of jurisprudence.²⁵

[8.1] Aḥmad b. ‘Abdallāh explains that “they consider co-absence (*qiyās al-‘aks*) to have the likeness of the conditional hypothetical syllogism (*qiyās al-talāzum*).” Hence in this case, Aḥmad

[8.2] قولنا إن كان هذا إنساناً فهو حيوان لكنه ليس بحيوان فليس بإنسان ويسمى قياساً¹⁶ التلازم الاستثنائي¹⁷ وقياس الاقتران مثل كل جسم مؤلف، وكل مؤلف محدث، ينتج كل جسم محدث. ويسمى القياس الاقتراني تمت¹⁸ م.

[8.3] ومن أمثله قول الخنفيه لما لم يجب القتل بصغير المثل لم يجب بكبيرة بدليل عكسه في المحدد، فإنه لما وجب بكبيرة وجب بصغيرة. فالأصل المحدد والفرع المثل والحكم في الأصل الوجوب وفي الفرع نقيضه هـ.¹⁹

[8.4] قال الرازي وليس بقياس في الحقيقة وإنما هو²⁰ تمسك بنظم التلازم وإثبات لإحدى مقدمتيه²¹ بالقياس، فإننا نقول لو لم يكن الصوم شرطاً للاعتكاف²² لم يصير شرطاً له بالنذر²³ لكنه يصير شرطاً له²⁴ بالنذر²⁵ فهو شرط له مطلقاً. فهذا تمسك بنظم التلازم واستثناء²⁶ لنقيض اللازم لإنتاج²⁷ نقيض الملزوم. قال الرازي ثم إنا ثبت المقدمة الشرطية بالقياس²⁸ بأن ما لا يكون شرطاً للشيء في نفسه لم يصير شرطاً له وإن علق بالنذر كالصلوة²⁹ وهذا قياس الطرد لا العكس هـ م.

16 V: قياس

17 B: + هـ

18 Missing in B.

19 Missing in B and V.

20 Missing in B.

21 B: مقدمته

22 V: في الاعتكاف

23 B: بالنذر

24 Missing in V.

25 B: بالنذر

26 V: واستثنى

27 Unclear in V due to ink spill.

28 B: بالقياس

29 B: كالصلوة

b. ‘Abdallāh is pointing out the fundamental disagreement between al-Wazīr and Ibn Zayd on the scope of what *qiyās* constituted. The former, he claims, permitted importing ideas from formal logic and accepting them at face value as such. The latter did not consider the act of borrowing ideas from non-legal genres to be valid within the realm of *qiyās*. This is despite the fact that those who concurred with Ibn Zayd used many of the same interpretive tools either by assigning them an alternate category, or by asserting their textual (in lieu of speculative) roots. Therefore, in the view of Ibn Zayd, the likeness of co-absence (*qiyās al-‘aks*) to that of the conditional hypothetical syllogism (*qiyās al-talāzum*) – a type of reasoning derived from formal logic – necessarily implied that it is outside of the realm of law. Since he deems syllogistic reasoning to be excluded from the formal definition of *qiyās*, this implies that co-absence (*qiyās al-‘aks*) is therefore not a valid form of legal analogy.

[8.2] For all of the argumentation on the validity of using formal logic (*manṭiq*) in the realm of law, how did jurists integrate non-legal reasoning into the procedure of legal analogy? To further explain *qiyās* in the realm of formal logic (*manṭiq*), he offers examples of the conditional hypothetical syllogism (*qiyās al-talāzum*) and conjunctive syllogism (*al-qiyās al-iqtirānī*) as found in classical manuals of that genre; he then shows [8.3] how this is applied in the law, noting an instance of conjunctive syllogism (*al-qiyās al-iqtirānī*) in the view of the Ḥanafis that when execution is not mandated for murder committed with a small rock, then it is not mandated for murder committed with a large rock, by way of the evidence of its converse. The converse in this case was that execution could only be mandated for instances in which an iron weapon capable of cutting or piercing was used, on the basis that only with the use of such a weapon could an intent to kill be established. He continues, focusing on how such syllogistic logic would work, noting that “[the same syllogistic relationship would exist if the opposite were true, namely that], if execution were mandated in cases in which a large rock were used as the murder weapon, then it would also be mandated in the case of the small rock, with the primary case (*aṣl*) being that of the iron weapon, the derived case (*far‘*) being that of the rock, the judgment (*ḥukm*) for the *aṣl* being the obligation to execute, and the judgment (*ḥukm*) for the *far‘* being blood money (and hence the converse of the obligation to execute).”

[8.4] Aḥmad b. ‘Abdallāh then moves on to the oft-cited query used to demonstrate the application of co-presence and co-absence (*qiyās al-ṭard wa-l-‘aks*), namely the problem of whether fasting and prayer are individually obligatory for *i’tikāf* to be valid. Jurists puzzled over two major issues on the rulings related to *i’tikāf*. First, were the necessary conditions of the vowed *i’tikāf* the same as those of the superogatory *i’tikāf*? Second, was the performance of prayer, fasting, or both, obligatory for one’s *i’tikāf* to be valid? Citing the Shāfi‘ī jurist and philosophising Ash‘arī scholar Fakhr al-Dīn al-Rāzī (d. 607/1210), he explains that the analogical reasoning applied in this case on the part of those Zaydis who concur with al-Wazīr’s approach is not the specific legal procedure denoted by the Shāfi‘īs, but rather the application of conditional and syllogistic reasoning borne from formal logic (*manṭiq*). The case of fasting and vowed *i’tikāf*, he notes, “adheres to the line of reasoning known as conditional and exceptive syllogism by way, in this case, of the application of the converse of the necessary condition producing the converse of the sufficient condition.” He continues his discussion of Rāzī’s explanation, who states that “we have hence established the conditional premise by way of *qiyās* that whatever is not a prerequisite for (the validity of) *i’tikāf* independently in and of itself cannot thereafter then become a prerequisite for it (later or in a new circumstance); this is true even if the proposed prerequisite is associated with the case of the vowed *i’tikāf*, such as the case of prayer, which is an instance

[8.5] أعلم³⁰ أن في الاعتكاف صوراً³¹ كثيرة. أحدها أن تقول: نذرت اعتكاف يومي صائماً مصلياً. وثانيها أن يقيد النذر بالصوم فقط. وثالثها أن تقول: نذرت اعتكاف يومي من غير تقييد للاعتكاف³² بصوم. ورابعها: أن تقول لله تعالى³³ اعتكاف³⁴ يوم من غير نذر.

[8.6] ففي الصورة الأولى يجب عليه الصوم في حال الاعتكاف لأنه التزمهما³⁵ ولا تجب عليه الصلوة في هذه الصورة.³⁶ قال السراج وذلك بالإجماع. والفرق أن الصوم والاعتكاف متناسبان³⁷ في أن كل واحد منهما كفّ وأمسك فيصلح³⁸ أن يكون أحدهما وصفاً للآخر، والصلوة أفعال تباشر فلا مناسبة³⁹ بينهما وبين الاعتكاف.

[8.7] هكذا قرره⁴⁰ بعض الفقهاء وهو ضعيف. فإن لقائل⁴¹ أن يقول بل بين الاعتكاف والصلوة مناسبة وهو أن كل⁴² واحد منهما طاعة شاقة على النفس. فالأولى أن يقال إنهما لم يجب⁴³ الصلوة في هذه الصورة⁴⁴ ووجب الصوم فيها لأنها عبادة مستقلة جعلت شرطاً في الاعتكاف وهي غير مقدورة، والشرط إذا كان غير مقدور لا يجب. وبيانه أن الصلوة متعذرة في جميع أجزاء اليوم قطعاً، ولو لم يكن ذلك⁴⁵ إلا في حال التسليم بعد الفراغ من ركعتين مثلاً، فإن الناذر لا يكون في تلك الفينة مصلياً وإن عقب صلوته بصلوة أخرى لأنه لا بد من جزء من الزمان يتخلل بين الصلوتين بوصف المعتكف بأنه فيه غير مصل، ولأن في اليوم ثلاثة أوقات تكره فيها الصلوة والصوم لا يجري فيه ما ذكر، فلذلك وجب في هذه الصورة ولم تجب الصلوة والصورة⁴⁶ الثانية مثل الأولى في وجوب الاعتكاف والصوم جميعاً.

[8.8] وهي التي عن ابن الحاجب بقوله لما وجب الصيام في الاعتكاف بالنذر⁴⁷ وإن شملت⁴⁸ عبارته إحداهما⁴⁹ فقط. وأما الصورتان الأخريان من الأربع الصور المذكورة أو إياهما⁵⁰ عن ابن الحاجب بقوله وجب الصوم في الاعتكاف بغير نذر وإن شملت عبارته أحدهما فقط⁵¹ هـ. فاعلم أن العلماء اختلفوا فيمن قال: نذرت اعتكاف يومي من غير تقييد الاعتكاف بصوم، أو قال: عليّ الله اعتكاف يوم.

[8.9] فذهب ش⁵³ أنه لا يجب الصوم مع الاعتكاف في⁵⁴ هاتين الصورتين وذلك لأن⁵⁵ كل واحد من

30 B: + هـ

31 صور

32 V: الاعتكاف

33 B: عليّ الله

34 V: الاعتكاف

35 V: التزمها

36 B: الصلوة

37 V: + بالإجماع (crossed out)

38 V: فيصح

39 B: مناسبة

40 B: قرر

41 B: القائل

42 V: + كل

43 B: تجب

44 B: هذه الصوة

45 V: كذلك

46 Missing in B, V.

47 Missing in V: بالنذر ... وهي التي

48 B: شملت

49 B: أحدهما

50 V, Y: وإياهما

51 Missing in V: فقط ... وأما الصورتان ...

52 V: + قال

53 V: الشافعي

54 B: وفي

55 B, V: أن

of co-presence (*qiyās al-ṭard*) and not co-absence (*qiyās al-‘aks*).”

[8.5] He expands further, outlining four hypothetical cases borrowed from Rāzī’s discussion for further investigation. The first case is that one vowed to perform *i’tikāf* for a day along with praying and fasting; the second, that one vowed to perform *i’tikāf* while fasting only; the third, that one vowed to perform *i’tikāf* but without the restriction of fasting; and the fourth, that one chose to perform a superogatory *i’tikāf* for a day, without a vow.

[8.6] Aḥmad b. ‘Abdallāh then mentions the implications of each scenario as articulated by al-Rāzī, appending his own analysis. In the first case, fasting would be obligatory because it is deemed a necessary condition for the validity of the vowed *i’tikāf*, however prayer would not be obligatory even if explicitly articulated in a vow. He notes that according to the Shāfi‘i jurist and logician Sirāj al-Dīn al-Urmawī (d. 693/1294), this view is backed by consensus (*ijmā’*). The distinction between fasting and prayer as applied to the vowed *i’tikāf* is that fasting necessarily co-exists with *i’tikāf* such that if one breaks one’s fast during the time of day that it should normally be kept, one has also broken one’s *i’tikāf*. The vowed *i’tikāf* could be conceptualised as the occasioning factor (*illa*) for fasting in this case. Both fasting and *i’tikāf* necessarily co-exist such that one of the two can be mentioned as an implied description of the other. Prayer, on the other hand, is an act initiated by its own separate and independent procedure, hence as a “state” (*ḥāl*) it cannot retain equivalency with *i’tikāf*.

[8.7] Aḥmad b. ‘Abdallāh finds this line of reasoning to be weak. In his view, one could just as much argue for an equivalency between prayer and *i’tikāf* through an alternate avenue, namely that both share the feature of being directed devotional obedience and hence have a parallel relationship as well. He suggests an alternate line of reasoning as more convincing instead, namely the application of the idea that a condition or prerequisite that is not humanly feasible cannot thereby be mandated as an obligatory act. In this case, there are time periods during the day in which prayer is prohibited or disliked such that the day is divided into portions in which prayer is permitted and portions in which it is not. Due to this, prayer is not a state within which one can persist in uninterrupted continuity alongside the state of *i’tikāf*. Rather, there are moments in which one must be in a state of *i’tikāf* but not be in a state of prayer, or else one risks engaging in sin. Fasting, on the other hand, is a continuous act during a part of the day which does not suffer disruption; hence it can be made obligatory as a condition that is humanly feasible, while prayer cannot be made as such.

[8.8] As for the second hypothetical, this adopts the same judgment (*ḥukm*) as the first hypothetical in the obligation to fast. He cites the Mālikī jurist Ibn al-Ḥājib (d. 646/1249), noting that fasting was obligatory in the case of the vowed *i’tikāf* whether or not one specifically articulated a vow to fast along with a vow to perform *i’tikāf*. Hence, for the Mālikīs, the second and third hypotheticals yielded the same result of the requirement to fast. As for the fourth hypothetical, he notes that Ibn al-Ḥājib indicates that fasting is nonetheless still obligatory even in cases of the superogatory *i’tikāf* as well.

[8.9] The Shāfi‘is, on the other hand, did distinguish between the second and third cases. Contrary to the Ḥanafis and Zaydis, they deemed fasting to be an independent act of worship, separate from *i’tikāf*. Hence, if fasting were excluded from the vow, as in the third case, then it was not required in order to complete the vowed *i’tikāf*. Fasting was likewise not required in instances of the superogatory *i’tikāf*, as in the instance of the fourth case.

الصوم والاعتكاف عبادة مستقلة ولم يذكر إلا الاعتكاف، فوجب من دون الصوم.⁵⁶

[8.10] ومذهبنا ومذهب الحنفية وجوب الصوم في الصورتين مع الاعتكاف، وذلك لأن الاعتكاف نفسه ليس بقربه، وإنما القربة الصوم فلز. واحتج أصحابنا والحنفية في هاتين الصورتين بقياس العكس.

[8.11] فقالوا لما وجب الصوم في الاعتكاف بالنذر كما ذكر في الصورتين الأولين وجب الصيام في الصورتين الأخيرتين.⁵⁷ وعكسه الصلوة في حال الاعتكاف فإنها لما لم يجب في الاعتكاف بالنذر إجماعاً كما ذكر⁵⁸ في الصورة الأولى لم يجب في الصورتين الأخيرتين.⁵⁹ فالأصل هو الصلوة في النذر بالاعتكاف، والفرع⁶⁰ الصوم في الصورتين الأخيرتين،⁶¹ وحكم الصلوة أنها لا يجب في الاعتكاف كما ذكر⁶² والثابت⁶³ في الصوم نقيض هذا الحكم المذكور للصلوة⁶⁴ وهو أنه يجب في الاعتكاف بالنذر كما ذكر فيجب في مطلق الاعتكاف، ويشمل هذا القسم الصورتين الأخيرتين،⁶⁵ فحكم الأصل وهو الصلوة عدم الوجوب وحكم الفرع وهو الصوم الوجوب والعلة فيهما⁶⁶ أن الصلوة غير شرط في الاعتكاف والصوم شرط فيه، فيثبت في الفرع الذي هو الصوم حكم هو الوجوب، وهو مناقض لحكم الأصل الذي هو الصلوة إذ حكمهما⁶⁷ عدم الوجوب بنقيض علة الأصل لأن علة الصلوة في عدم الوجوب أنها ليست شرطاً في الاعتكاف ونقيضها أن الصوم شرط فوجب في الاعتكاف والله أعلم هـ.

[8.12] واعلم أن قول ابن الحاجب لما وجب الصوم⁶⁸ في الاعتكاف بالنذر لا يدخل تحته إلا الصورة التي⁶⁹ ينص الناذر فيها على الصوم فقط، وقوله وجب بغير نذر يشمل الصورة الرابعة فقط بظاهر لفظه، والصورة الثالثة⁷⁰ حكمها حكمهما⁷¹ فاعرفه. واعلم أن مدعي الإجماع على أن الصلوة غير واجبة في الصورة الأولى يحتاج إلى أن يستفسر عن مراده فإن أراد⁷² أنه لا يلزم الناذر الجمع بينهما⁷³ بالإجماع فهو صحيح، وإن أراد أنه لا يلزمه كلاهما بالإجماع⁷⁴ فهو ممنوع، فإن مذهب ش أنهما يلزمان الناذر لكن عليه⁷⁵ أن⁷⁶ يفعل الصلوة في غير هذا اليوم الذي نذر فيه بالاعتكاف. فإن قال ش قولكم في قياس العكس المذكور وعكسه الصلوة فإنها لما لم تجب في النذر بالاعتكاف إلى آخره ممنوع فإننا ندعي على من نذر بالاعتكاف مصلية وجوبها وإن لم يجب عليه الجمع بينهما، قلنا فكان يجب على مقتضى قياس العكس وجوب الصلوة في مطلق الاعتكاف عندكم وإن لم يجب الجمع بينهما ولا قائل به والله أعلم هـ.

56 B: صوم

57 Y: الأخرتين

58 B, V: ذكره

59 Y: الأخرتين

60 Above the line in Y.

61 Y: الأخرتين ... Missing in V: الأخرتين

62 B: ذكره

63 Y: والثالث

64 V: في الصلوة

65 Y: الأخرتين

66 Missing in V: فيهما ... وهو الصلوة

67 V: حكمها

68 B: لصوم

69 B: لتي

70 B: والثالثة

71 B above the line: حكمها V: حكمهما

72 B: أراده

73 V: بينها

74 Missing in V.

75 B above the line: هو له

76 B: أنه

[8.10] Aḥmad b. ‘Abdallāh finally turns to the Zaydi and Ḥanafī positions. He notes that in their view, fasting was in fact obligatory in the third and fourth cases alongside *i’tikāf*, because *i’tikāf* in itself did not yield the result of attempting to achieve closeness to God; rather it was the act of fasting that fulfilled this, hence, it was a necessary condition for *i’tikāf* in all cases, even if one excluded fasting from one’s vow as in the third case, or performed superogatory *i’tikāf* as in the fourth case.

[8.11] His channel of reasoning to support his view was the application of co-absence (*qiyās al-‘aks*). In this view, he notes that when fasting is obligatory for the vowed *i’tikāf* as in the first and second cases, then it is also obligatory in the third and fourth cases. The converse case is prayer, because when prayer was not obligatory to fulfill the vowed *i’tikāf* by consensus (*ijmā‘*) as in the first case, then it was also not made obligatory in the last two cases. Hence, in this scenario the principal case (*aṣl*) is the case of the vowed *i’tikāf* and prayer, and the derived case (*far‘*) is the case of fasting in the third and fourth cases. The judgement (*ḥukm*) for prayer would be that it is not obligatory for the vowed *i’tikāf*, and therefore the judgment (*ḥukm*) for fasting would be the converse, namely that it would be obligatory in the case of the vowed *i’tikāf*. The occasioning factors (*‘ilal*) in both were that prayer is not a condition for the vowed *i’tikāf*, and that fasting is a condition for it. In the Ḥanafī view, an element not accounted for by co-absence (*qiyās al-‘aks*) was the added implication that because fasting was obligatory in the vowed *i’tikāf*, it was then obligatory in an absolute sense in all cases, including the fourth hypothetical case of the superogatory *i’tikāf*.

[8.12–8.13] The Shāfi‘is, Aḥmad b. ‘Abdallāh notes, were critical of the Ḥanafis on two points. First, they took issue with the idea that the Ḥanafis could consider prayer not obligatory in any category of *i’tikāf*. Second, the Ḥanafis were allowing for a logical fallacy. Co-absence (*qiyās al-‘aks*) accounted for obligating fasting in the case of the vowed *i’tikāf*, however it did not account for the additional Ḥanafī view that fasting was obligatory in all cases including superogatory *i’tikāf*. To the first point, Aḥmad b. ‘Abdallāh responds that there is no doubt that prayer was an obligatory act to perform more generally. However, the performance of prayer was obligatory outside of *i’tikāf* as well. Hence, for the Ḥanafis the obligation of prayer did not correlate with being in a state of *i’tikāf* since the obligation existed outside of *i’tikāf* and since there were periods of time during *i’tikāf* in which prayer was prohibited. As for the second point, Aḥmad b. ‘Abdallāh concurs that co-absence (*qiyās al-‘aks*) does not account for the obligation to fast in all cases. But, he argues, the Ḥanafis never intended for co-absence (*qiyās al-‘aks*) to account for both. Rather, the procedure of *qiyās al-‘illa* was used to demonstrate that if fasting were required for the vowed *i’tikāf*, then this could also be extended to superogatory cases.

In plain language, al-Wazīr argues for the validity of *qiyās* as an interpretive tool, in contradistinction to the classic Twelver position. As Aḥmad b. ‘Abdallāh demonstrates, he also opines with those Zaydis who applied reasoning in congruence with the Ḥanafis allowing for the application of syllogistic reasoning as a valid form of *qiyās*. Hence, co-presence (*qiyās al-ṭard*) and co-absence (*qiyās al-‘aks*) receive formal entries as valid categories in his text. In the earmarked case described above, the Ḥanafis and Zaydis used the widely accepted procedure of *qiyās al-‘illa* – which the Shāfi‘is and Mālikis would have theoretically found acceptable – to connect the two cases of fasting in the vowed and superogatory *i’tikāf*. However, in addition to this they also used syllogistic reasoning to connect the two cases of prayer and fasting through the application of co-absence (*qiyās al-‘aks*). The Ḥanafis took prayer to be the principal case (*aṣl*), with its judgment (*ḥukm*) being that it is not a prerequisite for *i’tikāf*. They wanted to situate the judgment

[8.13] وقد ورد⁷⁷ قياس العكس إلى قياس العلة وجعل منه إذ⁷⁸ الاعتكاف بالنذر⁷⁹ أصل، وبغير نذر فرع، إذ لا فارق إذ⁸⁰ يعرف أنه لا فارق بالسير بأن يقال ما الموجب للصوم إذا نذر به مع الاعتكاف مع موافقة⁸¹ الخصم أنه يجب هل الاعتكاف أو النذر أو أمر آخر الثالث باطل إذ⁸² لا دليل عليه والثاني باطل إذ لو كان المؤثر لأثر⁸³ في الصلوة إذا نذر بها مع الاعتكاف، فلم يبق إلا أن الموجب له المؤثر فيه هو الاعتكاف، فيجب الصوم مع الاعتكاف مطلقاً سواء⁸⁴ نذر به أم لا لأنه هو المؤثر. وهذا ليس من قياس العكس وإنما هو⁸⁵ قياس علة، وإنما ذكرت الصلوة لبيان أن⁸⁶ علة النذر غير مؤثرة تمت.

(*ḥukm*) for fasting, which was the derived case (*farʿ*) as the converse. The occasioning factor (*illa*) in the case of prayer was that it was not necessary for the vowed *i'tikāf*. Therefore, the converse occasioning factor (*illa*) was established in the case of fasting, namely that it was required for the vowed *i'tikāf*. Using *qiyās al-illa* they concluded that fasting was a prerequisite for all categories of *i'tikāf* by way of reasoning that had fasting been unnecessary for the superogatory *i'tikāf* to be valid, then it would not be a necessary condition for the vowed *i'tikāf* to be valid. In the case of prayer, since it was not a necessary condition for the superogatory *i'tikāf* to be valid, then it was not required for the validity of the vowed *i'tikāf* either.

Endnotes

- 1 Jan Thiele's work on this publication was conducted under the aegis of the grant RYC-2015-18346, funded by MCIN/AEI/10.13039/501100011033 and FSE "El FSE invierte en tu futuro."
- 2 For Šārim al-Dīn al-Wazīr see Ibn Abī l-Rijāl, *Maṭlaʿ al-budūr*, vol. 1, pp. 163-171 (no. 42); Yaḥyā b. al-Ḥusayn al-Yamanī al-Šanʿānī, *al-Mustaṭāb fī tarājim rijāl al-Zaydiyya al-ʿatqāb*, fols. 147b-149b; vol. 1, pp. 80-89 (no. 21); al-Wajīh, *A'lām*, pp. 69-71 (no. 30); and the editor's introduction to al-Wazīr, *al-Falak al-dawwār*, pp. 16-26.
- 3 Al-Shahārī, *Ṭabaqāt*, vol. 1, p. 80.
- 4 See editor's introduction to al-Wazīr, *al-Falak al-dawwār*, p. 16.
- 5 Al-Shahārī, *Ṭabaqāt*, vol. 1, pp. 81-85 collects a number of chains of transmissions and *ijāzāt*.
- 6 Al-Shahārī, *Ṭabaqāt*, vol. 1, p. 85: *kāna l-sayyid Šārim al-Dīn mubarrizan fī 'ulūm al-ijtihād jamī'ihā*.
- 7 See editor's introduction to al-Wazīr, *al-Falak al-dawwār*, p. 19.
- 8 Ibn Abī l-Rijāl, *Maṭlaʿ al-budūr*, vol. 1, p. 164.
- 9 For the text and its manuscript transmission see GAL, vol. 2, p. 241; GALS, vol. 2, p. 248; al-Wajīh, *A'lām*, p. 69, al-Ḥibshī, *Maṣādir*, p. 181, and the MSs listed in this chapter. We consulted 'Azzān's 2001 edition of *al-Fuṣūl al-lu'lu'yya*.
- 10 See GAL, vol. 2, p. 241; GALS, vol. 2, p. 248; and Rieu, *Supplement to the Catalogue of the Arabic Manuscripts in the British Museum*, p. 176.
- 11 Löfgren, and Traini, *Catalogue*, vol. 3, p. 24.

77 Y: رد

78 B: إذ

79 Missing in V.

80 V: + لا

81 Missing in V: مع الاعتكاف مع موافقة

82 Above the line in B.

83 V: الأثر

84 B: سو

85 Missing in B: قياس العكس وإنما هو

86 Above the line in V.

- 12 For Aḥmad b. ‘Abdallāh’s biography and works see Ibn Abi l-Rijāl, *Maṭla‘ al-budūr*, vol. 1, pp. 329–345 (no. 141); al-Shahāri, *Ṭabaqāt*, vol. 1, pp. 153–158 (no. 58); al-Wajīh, *A‘lām*, pp. 129–130 (no. 101). Löfgren and Traini state that Aḥmad b. ‘Abdallāh was Šārim al-Dīn al-Wazīr’s grand-nephew rather than his great-grandson, but this is not supported by the name given in the biographical literature.
- 13 The manuscripts digitised by the Zayd b. ‘Alī Cultural Foundation are freely accessible online via <https://elibrary.mara.gov.om/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/mktbtt-muosstt-alie-mam-zed-bn-ale-althqafett/> (accessed 26 August 2020).
- 14 For the manuscript see Ahlwardt, *Kurzes Verzeichniss*, p. 31; Ahlwardt, *Verzeichniss*, vol. 4, pp. 327–328, no. 4942; a digital copy (ZMT 00848) can be accessed via https://digital.staatsbibliothek-berlin.de/werkansicht?PPN=PPN733271049&PHYSID=-PHYS_0237&DMDID=DMDLOG_0001.
- 15 See no. 26 in the list of manuscripts of *al-Fuṣūl al-lu’lu’iyya*.
- 16 Ahlwardt, *Verzeichniss*, vol. 4, p. 328.
- 17 The end of the text reads as follows:

قوله وقد توسع بعض علمائنا كالخفيد فإنه ذكر في ترجيح العلة مائة وجه تمت هـ
- 18 Missing in the online digital collection at <https://elibrary.mara.gov.om/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/mktbtt-muosstt-alie-mam-zed-bn-ale-althqafett/>.
- 19 Missing in the online digital collection at <https://elibrary.mara.gov.om/mktbtt-muosstt-aliemam-zed-bn-ale-althqafett/mktbtt-muosstt-alie-mam-zed-bn-ale-althqafett/>.
- 20 *Qiyās al-tard* by itself or in combination with *qiyās al-‘aks* is sometimes also translated as “concomitance.”
- 21 Some authors use the term *reductio ad absurdum*, however this would be incorrect as such arguments correspond more closely to *a fortiori* arguments, not *qiyās al-‘aks*. We have found “co-presence” and “co-absence” to be the most accurate in this case, the terms used by Weiss. See Weiss, *The Search for God’s Law*, pp. 623–624.
- 22 *I’tikāf* refers to the recommended practice of retreating and isolating oneself in a mosque for the purpose of voluntary worship. *I’tikāf* can be performed on any day or night of the year and is considered a superogatory (*nafl*) act. However, if one has made a vow (*nadhr*) to perform *i’tikāf*, then the act becomes obligatory (*wājib*) to complete. The vow (*nadhr*) could either be: 1) a vow made to God by way of articulating a specific intent to perform *i’tikāf* or 2) a vow based on the fulfillment of a condition as in “if a specific event occurs, I will perform *i’tikāf* for ten days.” The legal schools differed on the details of these categories and what acts of ritual worship were deemed necessary conditions for the validity of each category of *i’tikāf*.
- 23 *Qiyās al-‘illa* is also sometimes referred to as *qiyās maṣūṣ al-‘illa* – analogical reasoning with explicitly mentioned occasioning factor; or *al-qiyās al-jālī* – analogical reasoning with an explicit occasioning factor. The concept refers to analogical reasoning whereby the judgment (*ḥukm*) as recorded by evidentiary texts directly articulates the occasioning factor (*‘illa*) of the case as well, leaving no doubt as to God’s intention and hence no need for jurists to deduce what the occasioning factor (*‘illa*) might be. This type of *qiyās* was largely deemed to be the most reliable of the various types.
- 24 *Qiyās al-dalāla*, generally speaking, refers to instances in which the analogical relationship had to be inferred or deduced by jurists and was not explicitly textually referenced, as in the case of *qiyās al-‘illa*. There are sub-categories of *qiyās al-dalāla* based on the type of inferential reasoning that is being deployed; This line of reasoning was also sometimes referred to as *qiyās al-shabah*.
- 25 In many instances jurists who did not subsume syllogistic reasoning under *qiyās* instead subsumed it under a fifth category – outside of *qiyās*, *ijmā‘* and the two textual sources – the category of *istidlāl*.

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CHAPTER 7

The Role of Consensus in Legal Hermeneutics: A Chapter from the *Qanṭarat al-wuṣūl ilā ‘ilm al-uṣūl* of al-Mu’ayyadī (d. c. 1044/1634)

Robert Gleave and Kumail Rajani

Introduction

The passage edited and summarised below is the chapter on consensus (*ijmā‘*) from the 11th/17th century Zaydi *uṣūl* text *Qanṭarat al-wuṣūl ilā ‘ilm al-uṣūl* by the Yemeni scholar Ṣalāḥ b. Aḥmad b. al-Mahdī al-Mu’ayyadī al-Ḥasanī (hereon Mu’ayyadī). As his name suggests, he was a descendent of the Prophet through his grandson al-Ḥasan b. ‘Alī b. Abī Ṭālib. He was born into a scholarly family in the Yemeni city of Ṣan‘ā’, though his dates of birth and death are uncertain, since the biographical records vary: birth dates between 1010/1601 and 1019/1610 are recorded; death dates between 1044/1634 and (the less likely) 1070/1660.¹ Most sources record him as dying at a young age: one early source mentions a death after a “short life” (*al-‘umr al-qaṣīr*) of 29 years (between 1019/1610 and 1048/1638; this may be the most likely dating). His life was certainly eventful. The unpublished *al-‘Aqīq al-Yamānī* of al-Ḍamadī (d. 1068/1657) gives us, perhaps, the first biography of Mu’ayyadī. He appears as the one of three “leaders of the Sayyids of the family of al-Mu’ayyad”: the first is Muḥammad b. ‘Abdallāh Abū l-‘Allāma, and the second Ṣalāḥ’s father Aḥmad b. al-Mahdī b. ‘Izz al-Dīn; the third is Ṣalāḥ himself. Ṣalāḥ was responsible for leading a troop of Yemeni (i.e. mainly Zaydi) forces against the Ottoman occupiers, capturing the town of Abū ‘Arīsh² and was involved in the siege and recapture of Ṣan‘ā’ between 1625 to 1629. Al-Ḍamadī writes:

The third is [Aḥmad b. al-Mahdī b. ‘Izz al-Dīn’s] son al-Sayyid al-‘Allāma – the *Mujtahid* of the Time and the Proof of God to the people of the Age – Ṣalāḥ al-Dīn Ṣalāḥ b. Aḥmad b. al-Mahdī b. ‘Izz al-Dīn. He (may God have mercy on him) was a distinguished scholar in all sciences, a jurist, a great horseman, brave, honourable, a visionary leader, an eloquent writer and a poet. He had elegant handwriting in both Arabic and non-Arabic scripts. He excelled in every branch of knowledge. He studied under the Judge Aḥmad b. Yahyā Ḥābis and al-Sayyid Dāwūd b. al-Hādī; after them with Muḥammad ‘Izz al-Dīn the Muftī of Ṣan‘ā’ and other scholars. He received permissions (*ijāzāt*) from the scholars of his time such as Aḥmad b. ‘Allān al-Makkī and the like in other branches of scholarship such as hadith, Qur’anic exegesis (*tafsīr*) and others. They gave him permissions to transmit what they had written and audited, and what they had received permissions for from their teachers. He was given the general governorship by Imām al-Mu’ayyad bi’llāh, and his reputation was thereby enhanced. With al-Sayyid al-Ḥasan b. Amīr al-Mu’minīn [i.e. Imām al-Mu’ayyad], he laid siege to the city of Ṣan‘ā’ for 4 years. He patiently waged the *jihād* until the city surrendered. He attacked the town of Abū ‘Arīsh, taking it from [the Ottoman governor] ‘Alī Āghā. [Ṣalāḥ] sent [‘Alī Āghā], under guard, to his father. He then assumed the leadership of the territory. After a while, he left the region.³ When his sharpshooters arrived [to support him], he again entered Abū ‘Arīsh and stayed there for 6 months until he had put

things in order and then left the region. He conducted multiple raids into Syria, and Ḥuqār⁴ protecting it from the devils and the hands of the aggressors – may God have mercy on him. He was unique in his age in manners and etiquettes, the most remarkable of his period – may God have mercy on him. He died 3 days or 5 days after his father – may God have mercy on him.⁵

From this description, we have the archetypal Zaydi Yemeni religious leader: a scholar who is also a warrior; involved in the highest echelons of the Zaydi political hierarchy whilst also teaching and writing. Another early source records him as tutoring some of the leading scholars of the next generation. The cause of his early death is not recorded in the biographical literature, but he was buried in the same shrine as his father in the fort of Jabal Rāziḥ.

He composed numerous works during his short life. These include a collection of poetry and two works on grammar: a commentary on grammatical examples (*shawāhid*)⁶ and an abridgement of the commentary by al-ʿAynī. In jurisprudence, he is credited with a commentary on the *fiqh* work *al-Hidāya*.⁷ In *uṣūl*, he composed one of the commentaries on *al-Fuṣūl al-luʿluʿiyya* of Ṣārim al-Dīn Ibrāhīm al-Wazīr (the chapter on *qiyās* from another commentary of this work is edited by Sarah Islam and Jan Thiele in this volume), and a complete monograph, *Qanṭarat al-wuṣūl ilā ʿilm al-uṣūl*, part of which is edited and summarised below.

The *Qanṭarat al-wuṣūl ilā ʿilm al-uṣūl al-wārid ʿalā qawāʿid Āl al-Rasūl* has not, to our knowledge, ever been edited. The only extant manuscript was digitised by the Imam Zaid bin Ali Cultural Foundation, and which the Ministry of Endowments and Religious Affairs of the Sultanate of Oman have made available on their website.⁸ The provenance of the manuscript is not identified in the online catalogue and other information, though there is an unreadable stamp on fols. 54a and 72b. The cataloguer's notes explain that this copy is not the original, but is copied from the original by one Muḥammad b. ʿAbdallāh b. Muḥammad in 1079/1668 (some 9 years after the latest recorded death date of Muʿayyadī). The copy itself is at times difficult to read, given that dots and other annotations are used sporadically, and sometimes for the sake of presentation rather than accuracy. The work is a dense summary of the author's positions on the standard set of *uṣūl* issues. The work is divided into "chapters" (*bābs*, and each chapter is numbered; there are 10 *bābs* in total); each chapter is divided in the "sections" (*faṣl*), usually dealing with a specific issue (*masʿala*).

The fifth chapter is on consensus (*al-bāb al-khāmis al-ijmāʿ*), and runs from folio 54a to folio 60a. It follows on from the chapter on *kitāb* (the Qurʾān and the hermeneutical devices for understanding it: *ʿāmm-khāṣṣ*, *muḥkam-mutashābih*, *nāsikh-mansūkh* etc.) and before the chapter on *sunna* (concerning actions and reports, including the isolated reports). This order might appear unusual, as the usual order is *kitāb*, *sunna*, *ijmāʿ*; however, some classical Zaydi works of *uṣūl* do place *ijmāʿ* before *sunna* (as, for example, in al-Wazīr's *al-Fuṣūl al-luʿluʿiyya*). The reasoning here is, presumably, that the consensus of the Prophet's family (*ijmāʿ al-ʿitra*) is such an important and powerful legal source for the Zaydis that it gets promoted, and the validity of *sunna* is somehow reliant on *ijmāʿ*. As we shall see, this reordering does not prevent Muʿayyadī citing many reports from the Prophet when arguing his positions on the issue of consensus.

Consensus is, for Muʿayyadī (as for most Zaydi writers), a valid source of law, but when discussed "generally" (*ʿāmm*), it is restricted to the unanimous agreement of all *mujtahids* (and perhaps all members of the community, *mujtahid* or not). More significant for him (and for Zaydis more widely) is the consensus of the Family of the Prophet – by which he means, it becomes clear, the descendants of the Prophet (*sayyid*, pl. *sāda*) who have reached the level of *ijtihād*.

Since there are numerous Sayyid scholars who have attained this rank, the constituency is large but, it would seem, manageable. There is also much discussion about the consensus of the Companions (since this was a restriction that Zāhiri scholars had famously placed on consensus). Mu'ayyadī refutes this restriction, but it does open up a discussion of the ability of the opinion of a Prophetic Companion to act as a proof (*ḥujjiyyat qawl al-ṣaḥābī*); this in turn leads to a set of arguments which explain why a regular *qawl al-ṣaḥābī* is not a proof, but the opinion of the Companion such as 'Alī b. Abī Ṭālib is a proof. Whilst much of the discussion is quite derivative from Sunni *uṣūl* discussions, there is a distinctive set of Zaydi concerns demonstrated.

The work as a whole (and this is exemplified in the chapter edited below) is highly abbreviated and referential in style. This goes beyond the usual expectation that a reader knows citations (from Qur'an or from the hadith of the Prophet, for which only the opening words are cited); the reader is also expected to be fully cognisant of parallel discussions in other (particularly Sunni) works of *uṣūl al-fiqh*. Phrases (and sometimes whole sentences) are lifted from various *uṣūl* works, including commentaries on Ibn al-Ḥājjib's classic text of *uṣūl al-fiqh Mukhtaṣar al-muntahā l-su'al/Mukhtaṣar al-muntahā al-uṣūlī* (including the well-known commentary by 'Aduḍ al-Dīn al-Ījī, d. 756/1355), the *Minhāj al-wuṣūl* of al-Bayḍāwī (d. 685/1286) and *al-Iḥkām* of Sayf al-Dīn al-Āmidī (d. 631/1233). Phrases are also lifted from Zaydi works, including Ṣārim al-Dīn al-Wazīr's *al-Fuṣūl al-lu'lu'yya*. The result is a pastiche of *uṣūl* sources which could not be understood on its own, but which requires a high level of inter-textual familiarity in the canon of *uṣūl al-fiqh* before the work can be read and understood; we have tried to provide this background information in the commentary. For this reason, the commentary is much longer than the text itself; a straightforward "translation" of the text would be almost entirely incomprehensible given Mu'ayyadī's referential style.

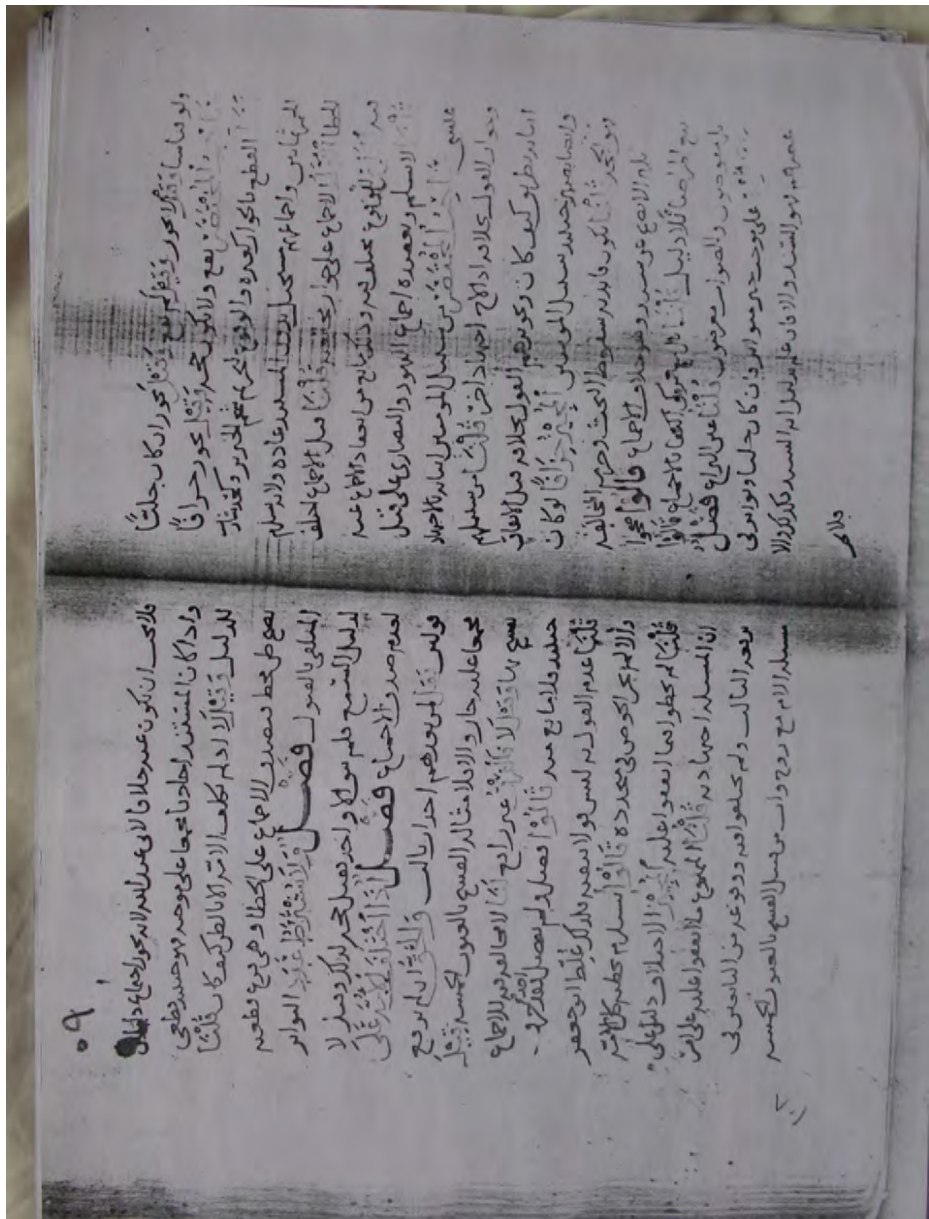


Figure 7.2 MS Imam Zaid Library, San'a' (#622-03), fols. 58b-59a

قنطرة الوصول إلى علم الأصول الوارد على قواعد آل الرسول
صلاح بن أحمد بن المهدي بن محمد بن علي المؤيدي الحسني م 1070هـ

[1]

الباب الخامس: الإجماع وهو عام وخاص.

[1.1]

والعام: نحو قول أمة محمد صلى الله عليه وآله وسلم بعد وفاته في عصر على أي أمر.

[1.2]

وقيل: مجتهدي أمة محمد صلى الله عليه وآله وسلم.

لنا: عموم الدليل.

[1.3]

قالوا: العادة تمنع وفاقهم، وغيرهم أيضا لا يمكنهم النظر.

[1.4]

وأيضا لا نسلم الأول، ويجوز أن تكون العصمة مقررة باعتبار الاجتماع وإن لم يكونوا من أهل النظر.

[1.5]

وقيل: مجتديهم ومقلديهم.

[1.6]

وقيل: مجتديهم وأهل الأصول.

[1.7]

وقيل: مجتديهم وأهل الفروع والتخصيص.

[1.8]

لادعاء تمكّن كل من النظر وقد علمت الحق مما سبق.

[1.9]

والخاص: هو نحو قول العترة كذلك.

Summary

In the first section [1], Mu'ayyadī introduces the topic, by dividing consensus (*ijmā'*) into two types: general [1.1] and specific [1.9]. The general refers to the agreement of the Muslim community (*ummat Muḥammad*) on a specific ruling at a particular point of time on a particular matter [1.1]. There is some debate concerning whether this “general” consensus refers to the whole community, or the community’s learned scholars (that is, the *mujtahids*) [1.2]. Mu'ayyadī critiques the restriction of the constituency for *ijmā'* to the *mujtahids*; his reasoning here is given in the terse statement “according to us, the indicator is general” (*lanā 'umūm al-dalīl*). By “indicator” here, he means that the indicator which establishes that *ijmā'* can be used as a proof: usually, this is traced to Prophetic statements such as the famous “my community shall never agree upon an error”, which Mu'ayyadī discusses later. By saying the indicator is “general”, he means that in these statements, words such as “community” refer to the whole community unless there is an indication that they have been “specified” to mean something other than this “general” meaning. He clearly does not consider there to be any such “specifying” indicator, so the word “community” means everyone, and the alternative, restrictive opinion (viz. *mujtahids* only) is invalid.

Other objections are posed [1.3]. First, “custom” (*al-āda*, “the usual manner of events”) means the whole community could never, in reality, agree on any single thing – i.e. it is a practical (though not logical) impossibility. Second, not all members of the community have religious knowledge, training and insight (they do not all have *naẓar* – “reflection”). Mu'ayyadī [1.4] does not accept the first point (and he gives reasons in section [2]); on the second point, he states that the inability to err (that is, the community’s *‘iṣma*) could be due to their agreement rather than any scholarly qualifications. That is, it is possible that the coming together (*ijtimā'*) creates the inerrancy (*‘iṣma*), rather than the fact that the members of the *ijmā'* constituency are scholars. In this Mu'ayyadī is implicitly arguing that when the community (scholars and laypeople) agree on an issue, a religious truth (almost through a divine fiat) is created: the members’ individual qualities are irrelevant. In the section [1.5] through to [1.7], Mu'ayyadī lists other formulations of the “*mujtahid* only” argument he has just refuted. Opponents argue for the delimitation of the *ijmā'* constituency to “*mujtahids* and lesser scholars (*muqallids*)”, or “*mujtahids* and *ahl al-uṣūl*”,⁹ or “*mujtahids* and experts in law and specific legal areas (*al-furū' wa-l-takhṣiṣ*)”. These delimitations are all based on the idea that certain sub-sections of the community are blessed with the requisite scholarly qualities (that is, they can exercise *naẓar*). As he has already pointed out, Mu'ayyadī explains [1.8], the ability of the members of the *ijmā'* constituency to exercise *naẓar* (*tamakkun kull min al-naẓar*) is not necessarily an element of a valid consensus.

Apart from arguments in section [1] concerning the *ijmā'* constituency, there have been scholars who argue against *ijmā'* in a more fundamental manner, rejecting its probative force (i.e. its ability to act as a *ḥujja*). In section [2], Mu'ayyadī tackles the arguments of those who deny *ijmā'* any role in legal derivation. The first argument against *ijmā'* [2.1] is a practical one: that the *ijmā'* constituency (whether it be the community as a whole or the *mujtahids* alone) is dispersed (*intishār*), and the ruling on which they are supposed to agree could not be circulated amongst the group. Mu'ayyadī rejects this: if the *ijmā'* constituents take their job seriously (*li-jaddihim wa-baḥṭhihim*), as they surely do, then the circulation should not be impossible. The second anti-*ijmā'* argument [2.2] is a rational one, and is both complex, and expressed in a highly compressed manner. *Ijmā'* is (it is argued) agreement on a proposition: what is the epistemological status of this proposition in itself: is it (in itself) certain (*qāṭi'*) or is it merely an opinion (*ẓannī*)?

[2]

فصل

[2.1]

فقليل: محال لانتشارهم فيمتنع نقل الحكم إليهم عادة.
قلنا: لا نسلم لجدهم وبحمهم.

[2.2]

قالوا: الاتفاق إما عن قاطع فالعادة تحيل عدم نقله، أو عن ظني والاتفاق يمتنع عليه عادة.
قلنا: لا نسلم فيهما فإنه قد يستغنى عن نقل القاطع بحصول الإجماع، وقد يكون الظني جليا.

[2.3]

وقيل: ثبوته عند المجتهد محال لانتشارهم، وبجواز خفاء واحد منهم، أو نحمله، أو كذبه خوفا، أو رجوعه قبل فتوى الآخر.

قلنا: تشكيك، فإننا نعلم تقديم القاطع على المظنون من السلف والخلف،¹ وأيضا لا يتعذر في أيام الصحابة فإنهم كانوا محصورين قليلين.

1 The text is scrubbed in the MS. Another possible reading could be البرهان.

Mu'ayyadī gives no example of this, but it could be a mathematical proof. Say the whole community were to come to an *ijmā'* that the *maghrib* prayer consists of 3 units; since everyone already knows this (i.e. it is *qāṭi'*), *ijmā'* adds nothing. The consensus is superfluous and therefore, epistemologically speaking, of no use. Mu'ayyadī responds that it is possible for *ijmā'* to be achieved (*ḥuṣūl al-ijmā'*) on a proposition which is known with certainty, and therefore be epistemologically useful (and, he adds, labour-saving). Commentators on Ibn al-Ḥāḥib's famous *Mukhtaṣar al-muntahā* (on which, see below) envisage the following scenario: a proposition is circulated, but without the demonstration that it is indubitably certain – that is, the proposition is circulated without its proofs (*adilla*). Such a proposition is, then, certain in itself, but not recognised as such by the community. Say the community then achieves *ijmā'* upon that proposition; if *ijmā'* has probative force, then by doing so, they raise the proposition to the level of “certain” through their agreement. In this instance, something that is certain in itself has become certain through *ijmā'*. The circulation of the proofs now becomes unnecessary, because the proposition has achieved certainty through *ijmā'*.¹⁰ Mu'ayyadī (following Ibn al-Ḥāḥib) is effectively arguing that *ijmā'* may be achieved on a proposition without anyone knowing that it is already certain (*qāṭi'*). In such cases, the *ijmā'* saves the community the bother of transmitting the proof-based certainty of the proposition (*naql al-qāṭi'*). *Ijmā'* in such instances is not useless, but is a shortcut to certainty. All of this complex argumentation is compressed into the phrases in [2.2]: *al-āda tuḥil 'adam naqlhi... qad yustaghnā 'an naql al-qāṭi' bi-ḥuṣūl al-ijmā'*, and to understand it, one really needs to already know the discussions in works such as Ibn al-Ḥāḥib's *Mukhtaṣar* and its commentaries.

There is another possibility: the proposition on which there is *ijmā'* is not certain in itself, but is something less than certain (i.e. opinion-based or *ẓannī*). The opponent argues as follows: anything *ẓannī* is, customarily, something on which there can be numerous opinions; if this is the case, absolute agreement (*ittifāq* – i.e. an agreement from which no member of the *ijmā'* constituency could demur) on a *ẓannī* proposition is impossible: a *ẓannī* proposition is, by definition, one on which there can, logically, be differing opinions. Mu'ayyadī counter-argues: a proposition could be technically *ẓannī* (that is, it is logically possible for one to doubt it), but so obvious (*jalī*) that no one doubts it. An *ijmā'* could be achieved on this “*ẓannī jalī*” proposition; once you have proved the logical possibility of *ijmā'* on a *ẓannī*, the opponent's argument (based on logical impossibility) is defeated. Mu'ayyadī gives no example, of a *ẓannī jalī* proposition – but a possible example might be taken from the wider *uṣūl al-fiqh* literature. When God says one should not be rude to one's parents,¹¹ then, *a fortiori*, it is obvious (*jalī*) that one should not also hit one's parents. The conclusion is technically *ẓannī* (because the text does not forbid hitting one's parents), but, it is argued, it is obvious (perhaps even undeniable) that hitting, being worse than swearing, is also forbidden by the Qur'anic verse. In [2.2], all this argumentation is compressed into the phrase: *'an ẓannī wa-l-ittifāq yamtani' 'alayhi 'ādatan... wa-qad yakūna l-ẓannī jalīyan*. Once again, a familiarity with the wider *uṣūl* tradition is crucial to understanding Mu'ayyadī's argument here.

The opponents' third argument [2.3] relates to *ijmā'* of the *mujtahids*. Such a consensus is, it is argued, impossible because the *mujtahids* are spread out, or one (or more) of them might be absent for some reason or other, or unknown, or he might be lying (out of fear – from the authorities perhaps), or he might change his mind before everyone has given their opinion (and thereby prevent agreement from happening). We encountered a similar argument in [2.1] in relation to the possibility of whole community agreement. Mu'ayyadī's response in [2.3] is to highlight instances where this sort of *mujtahid*-based consensus has occurred.¹² We know, for example, that all the early generations of Muslims (*al-salaf wa-l-khalaf*)¹³ agreed that a piece of information

[2.4]

وقيل: نقله إلى من يحتج به مستحيل عادة لأن الآحاد لا تفيد فيتعين التواتر وهو بعيد.
قلنا: كالأول تشكيك في مصادمة الضرورة الخ (منهاج)،² وأيضا ادعاء أن الآحاد لا تفيد ممنوع بل تفيد كالسنة.

[3]

فصل

وهو حجة عند الجميع، ولا اعتداد بمن قال ليس بحجة كالنظام والإمامية والخوارج لوجوه:

[3.1]

الأول: وهو أقواها «لا تجتمع أمي على ضلالة»،³ «لا تجتمع أمي على الخطأ»،⁴ «لا تزال طائفة من أمي قائمة بأمر الله لا يضرهم من خذلهم أو خالفهم حتى يأتي أمر الله وهم ظاهرون على الناس»،⁵ «يد الله مع الجماعة [فاتبعوا السواد الأعظم فإنه من شدد شدد في النار]»،⁶ «[إنه] من فارق الجماعة [شبرا فأت إلا ميتة جاهلية]»⁷ إلى غير ذلك مما تواتر معنى أو يلقى بالقبول.

[3.2]

الثاني: قوله تعالى: ﴿وَمَنْ يُشَاقِقِ الرَّسُولَ مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ وَيَتَّبِعْ غَيْرَ سَبِيلِ الْمُؤْمِنِينَ﴾،⁸ جمع بين مشاقة الرسول واتباع غير سبيل المؤمنين في الوعيد حيث قال: ﴿وَمَنْ يُشَاقِقِ الرَّسُولَ [مِنْ بَعْدِ مَا تَبَيَّنَ لَهُ الْهُدَىٰ]﴾ -الآية-،⁹ فتكون محرمة فيجب اتباع سبيلهم إذ لا مخرج عنهما، وليس بقاطع لاحتمال وجوه من التخصيص.

[3.3]

الثالث: قوله تعالى: ﴿وَكَذَلِكَ جَعَلْنَاكُمْ أُمَّةً وَسَطًا لِتَكُونُوا شُهَدَاءَ عَلَى النَّاسِ وَيَكُونَ الرَّسُولُ عَلَيْكُمْ شَهِيدًا وَمَا جَعَلْنَا الْقِبْلَةَ الَّتِي كُنْتَ عَلَيْهَا إِلَّا لِنَعْلَمَ مَنْ يَتَّبِعِ الرَّسُولَ مِمَّنْ يَنْقَلِبُ عَلَىٰ عَقْبَيْهِ...﴾ -الآية-،¹⁰ عدلهم فيجب عصمهم عن الخطأ قولا وفعلًا صغيرة وكبيرة بخلاف تعديلنا، وليس بقاطع لاحتمال أن الخطاب إنما هو للصحابة، واحتمال أنه تقتضي إصابتهم فيما يشهدون على غيرهم، ولو سلم فإنما تقتضي أنهم عدول وقت الشهادة، ولو سلم فالعدالة فعل العبد والوسط فعل الله، وغير ذلك.

2 The mention of the *Minhāj* in the marginal note is misleading. This phrase is not found in the *Minhāj*. However, it appears in: شرح العضد على مختصر المنتهى الأصولي ص 109

3 مجمع الزوائد ج 7 ص 221

4 This report with its exact wordings is not found in the primary sources of hadith.

5 صحيح مسلم ص 970

6 سنن الترمذي ج 3 صص 315-316

7 صحيح البخاري ج 8 ص 87

8 Qur'an 4:115.

9 Qur'an 4:115.

10 Qur'an 2:143.

which is certain (gained from a reliable text, for example) will over-rule something based on personal opinion (*maẓnūn*). Therefore, at least one past *ijmā'* is known to have occurred, and when one instance is proved, the impossibility (*muḥāl*) is disproved. Furthermore, immediately after the Prophet's death, it was perfectly possible to bring the Companions together, as they were of limited number – and in such an instance, the *ijmā'* could be established. The argument around the impossibility of the *mujtahids* forming a consensus is rebutted, then, by counter examples.¹⁴ Finally, the opponents argue that *ijmā'* cannot be transmitted to anyone in a later generation who might want to use it in their argumentation [2.4]. This is because any report of *ijmā'* having occurred is extremely likely to be an isolated report (*al-āḥād*). To be certain the *ijmā'* had occurred, one would need a report which is transmitted through multiple sources (the process known as *tawātur*), and this is highly unlikely to be available (*ba'īd*). Mu'ayyadī's reply is first, that the reports of the Companions' consensus (mentioned in [2.3]) are not isolated but transmitted through multiple chains (*mutawātir*), and thereby produce immediate necessary knowledge; once again the existence of a single counter example carries the weight of disproving the logical impossibility (*mustahīl*). Second, the claim that *āḥād* reports are not useful is straightforwardly rejected by Mu'ayyadī. They are useful, and they are used all the time when arguing about the records of the model behaviour of the Prophet (*al-sunna*). The rebuttal argument is, then, that not only are multiply transmitted reports of *ijmā'* available, but even when they were not, the remaining isolated reports are still useful in legal argumentation.

Section [3] is an exploration of the textual sources for the probative force of *ijmā'*. This section consists of sources which Mu'ayyadī cites in support of *ijmā'* [3.1]. Some of the sources are, for him, unpersuasive [3.2] and [3.3], and he does mention scriptural verses which the opponents of *ijmā'* use to disprove its probative force [3.4]. The argumentation requires detailed unpacking, since the sources are cited in abbreviated form (indicating that the readership were already fully familiar with the verses and need no more than a couple of words to recall them). Mu'ayyadī begins by stating that the vast majority of Muslims accept *ijmā'* as a legal proof and one should pay no attention to those who argue otherwise. Mu'ayyadī lists these opponents to *ijmā'*: the Mu'tazili thinker Ibrāhīm al-Nazzām (d. 225/840), the Imāmiyya and the Khawārij.¹⁵ The next three sections [3.1–3.3] examine the sources for *ijmā'*, and these are familiar from the wider *uṣūl* tradition. [3.1] lists the strongest proofs of *ijmā'*'s probative force in Mu'ayyadī's view: the reports from the Prophet. These include the famous “my community shall not agree upon an error”¹⁶, as well as a variant (e.g. “upon a mistake”)¹⁷. Also cited are the reports “there will always be a group within my community which is on the right [path]”,¹⁸ “the hand of God with the collective group”¹⁹ and “whoever breaks away from the collective group...dies a death outside of Islam – Jāhiliyya.”²⁰ There are others, Mu'ayyadī states, but he does not list them, and they are so well-attested that their combined meaning is either indubitable (*tawātur ma'nawī*), or their level of attestation is such that one must accept them as true and a source of knowledge. Sections [3.2], [3.3] and [3.4] refer to Qur'anic verses, and here Mu'ayyadī is less convinced. [3.2] introduces the verse “Whoever opposes the messenger... and follows a way other than that of the believers... we shall cast him into hell.”²¹ The crucial phrase here is “a way other than that of the believers” (*wa-yattabi' ḡhayr sabīl al-mu'minīn*), which is supposed to mean “a way other than the believer's *ijmā'*”. Both the person who “opposes the messenger” and the person who refuses to follow the “way of the believers” are promised the same fate of eternal damnation. God, in this verse, makes it obligatory for all to follow the Prophet's example (i.e. *sunna*) and the way of the believers (*sabīl al-mu'minīn*, i.e. *ijmā'*). However, the verse, for Mu'ayyadī is not a knock-down

[3.4]

قالوا: ﴿وَنَزَّلْنَا عَلَيْكَ الْكِتَابَ﴾ تَبْيَانًا لِّكُلِّ شَيْءٍ ﴿وَهَدَىٰ وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ﴾¹¹ ﴿فَإِنْ تَارَعْتُمْ فِي شَيْءٍ﴾
فَرُدُّوهُ إِلَى اللَّهِ ﴿وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا﴾¹² ونحوه، وغايته الظهور.

[4]

فصل

واجماع العترة المطهرة حجة بدليل ﴿إِنَّمَا يُرِيدُ اللَّهُ لِيُذْهِبَ عَنْكُمُ الرِّجْسَ أَهْلَ الْبَيْتِ وَيُطَهِّرَكُمْ تَطْهِيرًا﴾¹³ ﴿قُلْ لَا أَسْأَلُكُمْ عَلَيْهِ أَجْرًا إِلَّا الْمَوَدَّةَ فِي الْقُرْبَىٰ﴾¹⁴ «أهل بيتي [كسفينة نوح من ركبها نجا]»، «إني تارك فيكم ما إن تمسكتم به [لن تضلوا بعدي أحدهما أعظم من الآخر: كتاب الله حبل ممدود من السماء إلى الأرض، وعترتي أهل بيتي ولن يتفرقا حتى يردا عليّ الحوض فانظروا كيف تخلفوني فيهما]»، «مثل أهل بيتي [فيكم مثل سفينة نوح من قومه من ركبها نجا ومن تخلف عنها غرق]»، «إني تارك فيكم الثقلين [كتاب الله عز وجل، وعترتي، كتاب الله حبل ممدود من السماء إلى الأرض، وعترتي أهل بيتي]»، «إني مخلف فيكم الثقلين كتاب الله وعترتي أهل بيتي ما إن تمسكتم بهما لن تضلوا بعدي»، «أهل بيتي أمان لأهل الأرض [إذا ذهب أهل بيتي ذهب أهل الأرض]»، «إني تارك فيكم كتاب الله [وعترتي]»، «إن أهل بيتي فيكم كجاء حطة [في بني إسرائيل]»، «فأين يتاه [بكم؟ وكيف تعمهون وبينكم عترة نبيكم؟ وهم أئمة الحق وأعلام الدين وألسنة الصدق]»، «قرة خيار الحرب والسلم والانتفاء والتعصب والنشر والتعلم وغير ذلك مما لا يحصى ونقل تواترا لفظيا أو معنويا، والمنكر مباهاة.

11 Qur'an 16:89.

12 Qur'an 4:59.

13 Qur'an 33:33.

14 Qur'an 42:23.

proof. It could be interpreted differently and more specifically, he says (without elaborating further). Also unconvincing for Mu'ayyadī is the much-cited verse: “We have made you a virtuous nation, so that you can be a witness to the people...” [3.3].²² God has said that the Muslims are virtuous, and because he has declared their moral probity; this must mean that when they agree in word or deed, they are immune from error. A divine declaration such as this differs from “our declarations of moral probity” (*bikhlāf ta'dīlīnā* – for witnesses in a legal case, for example). There are interpretational issues here as well. First, the declaration may have been made specifically to the Companions (*al-khiṭāb innamā huwa ilā l-ṣaḥāba*) and not to the community as a whole. Second, the verse's phrase “so you can be a witness” could restrict the declaration of moral probity to the act of giving testimony, and not refer to all things. If this is so, then the Muslims are only “just” and “virtuous” for the purposes of giving testimony – not when they agree outside of this context. Finally, the moral probity of a witness is based on the individual's actions; in this verse, though, the declaration that the community is “balanced” or “virtuous” (*al-waṣaṭ*) is clearly an act of God.²³ Since the verse states that it is God who makes the community virtuous, and not the actions of the community, Mu'ayyadī implies there is an ambiguity in the verse, and ambiguous verses cannot act as definitive proofs (*laysa bi-qāṭi'*) since their interpretation is debated.

Those who argue against *ijmā'* cite the verses “We sent down to you the Book as the clarification of all things”,²⁴ and “if you disagree over anything, then refer it to God and his Prophet”²⁵ [3.4]. There is no mention of *ijmā'* in these verses, they argue; the community is required to refer to God for clarification (i.e. to his word in his Book) and to God and his Prophet in cases of disagreement. “If *ijmā'* was a source of knowledge, then why is it not mentioned here?” the argument would go. For Mu'ayyadī (as for the authors of texts he is shadowing – the *Mukhtaṣar al-muntahā*, the *Minhāj al-wuṣūl* and their commentaries), at the very most, these interpretations are merely the verses' apparent meaning (*ghāyatuḥu al-ẓuhūr*); there may, and most likely will, be additional, deeper meanings, and therefore the verses cannot be considered conclusive anti-*ijmā'* proofs.

Section [4] introduces Mu'ayyadī's thoughts on a central Zaydi doctrine: the probative force of the *ijmā'* of the family of the Prophet. That is, the descendants of the Prophet come to an agreement on an opinion, that produces a proof. Unlike in similar Zaydi texts, Mu'ayyadī does not enter into a discussion around who counts as a member of the Prophet's family, and whether the *ijmā'* constituency includes all descendants or just those legally qualified (i.e. the *mujtahids* from the Prophet's family). The lack of discussion here leads one to the tentative conclusion that he considers the *ijmā'* constituency in the “consensus of the pure family” (*ijmā' al-ʿitra al-muṭaḥhara*) to be the whole family. The proofs for this position include a series of citations from the Qur'an and the corpus of Prophetic hadith. They are provided, in the same style as in previous sections, in highly abbreviated form (with just the first few words of each citation given); the assumption yet again is that the readers will know these references already, and there is no need to quote the entire verse or hadith. The references include the standard Qur'anic verses “O People of the House, God intends to keep you from defilement and purify you completely”²⁶ and “I do not ask you [the Prophet] for any reward save honour for the kin”.²⁷ “People of the House” and “kin” are understood to refer to the family and descendants of the Prophet. The hadith references include the famous report (cited in four variants): “I leave you two weighty matters (*thaqalayn*): the Book and my family”, as well as “I leave you the book and my family, if you cling to them, you shall not err”.²⁸ Other reports cited (in two variants) include “My family is like

[4.1]

قالوا: أجمعت الصحابة على عدم اعتباره.
قلنا: دعوى باطلة.

[4.2]

قالوا: مسألة حادثة.
قلنا: المعتبر الدليل.

[4.3]

قالوا: بعض الأمة.
قلنا: المعتبر العصمة.

[5]

فصل

[5.1]

قال مالك وبعض المتعصبين: إجماع أهل المدينة حجة لقوله عليه السلام «إنَّ المدينة لتنفى خبثها»¹⁵ وهو ضعيف لمشاهدة وقوع انخطأ من أهلها، وأيضاً لا نسلم أنَّ الخطأ خبث لأنَّ الخطأ معفو عنه والخبث منى عنه، وأيضاً آحادي.

قالوا: العادة تقضي بأنَّ مثل هذا الجمع المنحصر من العلماء اللاحقين بالاجتهاد لا مجمعون إلا عن راجح. قلنا: يجوز أن يكون متمسك غيرهم أرجح ولم يطلع عليه بعضهم، أو مساوياً، ولا نسلم أنَّ هذا الاحتمال بعيد، وأيضاً يلزم مثله في كل جمع على تلك الصفة إذ لا أثر للإظلال ولا العمران.

كتاب الموطأ ج 2 ص 886؛ صحيح البخاري ج 9 صص 79، 143، 15

Noah's ark – whoever sails in it is saved; others are drowned",²⁹ "My family is, for you, like the Ḥiṭṭa Gate for the People of Israel",³⁰ "My family provides security for the people of the Earth".³¹ The list of citations ends with a quote from the sayings of 'Alī recorded in the *Nahj al-balāgha*: "Where are you being taken astray and how are you groping while you have among you the descendants of the Prophet? They are the reins of truth, signs of religion and tongues of truthfulness."³² From these references, Mu'ayyadi concludes that the descendants of the Prophet are the epitome of excellence in all the skills associated with the Zaydi Imam (war, statecraft, lineage, scholarship and many other attributes known through well-attested sources). "The one who denies this is a slanderer" (*al-munkir mubāhit*), he says in conclusion.

Next there are a series of objections to the doctrine that the *ijmā'* of the Prophet's family is a valid legal proof. These are expressed in highly abbreviated form in a "they say... we say..." (*qālū... qulnā*) format [4.1–4.3]. Each objection is summarily dismissed. If it is claimed that there is a companion-based *ijmā'* against this doctrine, this is, in Mu'ayyadi's view, simply a weak claim [4.1]. There is no such evidence of a companion-based *ijmā'*.³³ Opponents may claim that this doctrine is a new issue on which there has been a previous *ijmā'*; the reply is given that one should focus on the evidence, not on the existence (which, by implication, pre-empts any post-Prophetic *ijmā'*) [4.2]. There might be a claim that the Prophet's family make up only part of community – and a partial consensus is not a valid *ijmā'* [4.3]. The reply is that the focus of the argument is establishing inerrancy – and Mu'ayyadi believes he has already demonstrated (through the citation of evidence) that the Prophet's family enjoy this special quality of collective inerrancy.

In section [5], Mu'ayyadi deals with various claims for the probative force of the *ijmā'* of some, but not all of, of the community. He discusses the view of Mālik (the *ijmā'* of the people of Medina is a proof), Abū Khāzim (the *ijmā'* of the four "Rightly Guided" Caliphs is a proof) and an unnamed scholar (the *ijmā'* of the first two caliphs is a proof). He then discusses whether the opinions of the Companions, as a group and as individuals, can be used as a legal proof – and he concludes it cannot, except for the special case of the opinion of 'Alī b. Abi Ṭālib. True to his Shi'i persuasion, 'Alī's opinion is considered a proof, on account of a raft of scriptural proofs, which overlap sometimes with the evidence he adduces for the probative force of the *ijmā'* of the Prophet's family more generally.

Mālik's opinion that the *ijmā'* of the people of Medina is a proof is based on a Prophetic saying that "Medina removes its wickedness or sins, like the blacksmith's furnace".³⁴ [5.1] Mu'ayyadi responds first, that this is weak – though it is not clear if it is the argument that is weak, or the report. The argument may be weak because it does not accord with reality – people from Medina make mistakes (i.e. they are not sinless).³⁵ Further rebuttal arguments are adduced. First, Mālik's argument relies on "wickedness" (*khabath*) meaning the same as "mistake" (*khaṭā*); this is unconvincing because the latter is excusable, whilst the former is absolutely prohibited. Second, this report is an isolated report (*āḥādī*), and therefore a limited probative value. A response from Mālik and his followers is entertained: customarily, when a limited group of scholars, like the *mujtahids* of Medina, agree on something it should be on account of an overwhelming indicator, so their *ijmā'* has probative force on this basis. Mu'ayyadi's reply is that the same could be said of another group of scholars – or even, that they have a stronger (or equally strong) indicator as the basis for their collective opinion. The scholars in Medina could have no information about this other, stronger, indicator. "We do not accept that this potential scenario is unlikely" (*lā nusallim anna hādha l-iḥtimāl ba'id*). Finally, this argument does not discount every group of scholars

[5.2]

وقال أبو خازم [بالحاء المعجمة والزاء]: إجماع الخلفاء الأربعة حجة لقوله «عليكم بسنتي وسنة الخلفاء الراشدين من بعدي».¹⁶

[5.3]

وقيل: إجماع الشيخين لقوله «اقتدوا باللذين من بعدي أبو بكر وعمر».¹⁷
قلنا: ضعيف، سلمنا فالمراد بيان أهليتهم للتقليد، وأيضا معارض بـ«خذوا شطر دينكم عن الحميراء»،¹⁸ وبقوله «أصحابي كالنجوم بأيهم اقتديتم اهتديتم».¹⁹

[5.4]

وقال الشافعي وأحمد: قول الصحابة حجة على غيره مقدمة على القياس.
وقال أبو حنيفة: إن خالف القياس.
الأول: «أصحابي كالنجوم».²⁰
قلنا: ضعيف، سلمنا فالمراد المقلدون لأنّ خطابه صلى الله عليه وعلى آله وسلم للصحابة وليس قول بعضهم على بعض حجة بالإجماع.
الثاني: إذا خالف القياس، فلا بد من حجة نقلية.
قلنا: يلزم في الصحابي ويجري في غيره إذا خالفه على غيره.

16 مسند أحمد ج 4 صص 126-127

17 مسند أحمد ج 5 ص 382

18 This report is not found in the primary sources of hadith. The 18th century Shāfi'i scholar al-'Ajalūnī writes:

قال الحافظ عماد الدين: هو حديث غريب جدا، بل هو

منكر، سألت عنه شيخنا المزي فلم يعرفه، وقال: لم أقف له على سند إلى الآن، وقال شيخنا الذهبي: هو من الأحاديث الواهية التي لا يعرف لها سند. كشف الخفاء ج 1 ص 374 with minor variations.

20 See footnote n. 19.

having this characteristic (i.e. when they agree on something it must be on account of an overwhelming indicator), and the fact that they resided in the same city (or they shared the same city) where the Prophet lived sometime in the past does not make them special.

In [5.2] and [5.3], Mu'ayyadī discusses the views that restrict *ijmā'* to a limited number of the Prophet's Companions, in particular those who are considered the "Rightly-Guided Caliphs" by the Sunnis. In [5.2], the view of 'Abd al-Ḥamīd b. 'Abd al-'Azīz known as Abū Khāzim (d. 292/905, the Ḥanafī judge) is laid out. He argued for the probative force of the *ijmā'* of the four rightly guided caliphs on the basis of the Prophetic saying, "You must follow my *sunna* and the *sunna* of the Rightly-Guided Caliphs after me".³⁶ There is also an unattributed view (*qīl*) that one should follow the *ijmā'* of the first two caliphs: Abū Bakr and 'Umar. Both of these views are based on weak reports, Mu'ayyadī argues.³⁷ However, even if we were to accept them they prove nothing more than it is *permitted* to follow the caliphs (be it two or four – *bayān ahliyyatihim lil-taqlīd*), not that they form some type of *ijmā'*. Even then, the reports contract other well-known reports such as the report "My Companions are stars, follow any of them",³⁸ and the Prophet's statement regarding 'Ā'isha, "take half your religion from the Ḥumayrā" [i.e. 'Ā'isha]."³⁹ Of course, a Zaydī jurist such as Mu'ayyadī is unlikely to be himself convinced by these reports (one of which he has possibly already indicated is weak), but he is arguing (following the texts he is shadowing) against the opponent on the opponent's own premises.

In [5.4], Mu'ayyadī shifts his focus from legal status of the *ijmā'* of the early generations to the legal status of their individual opinions. Discussions of the probative force of "the opinion of a Companion" (*qawl al-ṣaḥābī*) comes later in many works of *uṣūl*, and not in the section on *ijmā'*. Mu'ayyadī, in doing this, is following a traditional Zaydī precedent. Some other *uṣūl* traditions consider the probative force of a Companion's opinion in the section discussing other legal sources beyond the standard four (such as "juristic preference" – *istiḥṣān*, and "general benefits" – *al-maṣāliḥ al-mursala*).⁴⁰ Many Zaydis include such a discussion within the chapter on *ijmā'*. This appears to be a consequence of their argument against the doctrines of some Sunni scholars that the *ijmā'* of the four caliphs, or of the first two caliphs, is a valid legal proof. In order to reject these doctrines, the Zaydis argue that there is no reason to prefer their opinions over those of another Companion. Of course, the response then would be to query why the opinion of 'Alī b. Abī Ṭālib is a proof for the Zaydis. This leads on to a specific justification of 'Alī's opinion to the exclusion of the other Companions. This is the logic for the presentation of discussion around *qawl al-ṣaḥābī* in the *ijmā'* section in Zaydī *uṣūl* works, and Mu'ayyadī conforms to this model: [5.4] discusses (and rejects) *qawl al-ṣaḥābī*; in [5.5] he discusses (and strongly affirms) the opinion of 'Alī.

In [5.4], the opinions of other schools are entertained. Al-Shāfi'ī (d. 204/820) and Aḥmad (d. 241/855) are credited with the opinion that the *qawl al-ṣaḥābī* is legally binding on subsequent scholars (and the community) and takes precedence over the results of their analogical reasoning (*qiyās*). The argument here is that the Companion, when he proffers an opinion, could actually be recounting the Prophet's opinion – which is a primary source of law and takes precedence over *qiyās*. Elsewhere in the *uṣūl* tradition, the argument is made that if this *qiyās* is later found to agree with that *qawl al-ṣaḥābī*, the *qiyās*-based opinion become a supporting piece of evidence that the *qawl al-ṣaḥābī* is in fact a record of the Prophet's opinion. In these circumstances, *qiyās* confirms that the *qawl al-ṣaḥābī* is, in fact, based on a scriptural source (i.e. *kitāb* and *sunna*). Abū Ḥanīfa is credited with the opposite opinion: the *qawl al-ṣaḥābī* is a proof only if it disagrees with a *qiyās*-based opinion. This view is based on the presumption that the Companions sometimes

[5.5]

فأما الوصي [فمخصوص] بحجة قوله:

قيل: فيما الحق فيه واحد.

وقيل: مطلقاً.

وقيل: إن قيل بالتصويب فكذلك، وإن قيل بأنّ الحق في واحد فطلقاً، لدليل العصمة، مع قوله «الحق مع علي»،²¹ «[رحم الله علياً] اللهم أدر الحق مع علي حيث دار»،²² «أنا مدينة العلم [وعلي بابها]»،²³ «أنت مني بمنزلة هارون [من موسى]»،²⁴ وغير ذلك مما تواتر معنى.

وقيل ليس بحجة لمجازبة الصحابة له أطراف المسائل من غير تكثير منه عليهم وإذ لم يؤثر أنه استدل بقوله عليهم.

21 مجمع الزوائد ج 7 ص 235

22 سنن الترمذي ج 5 ص 297 with minor variations.

23 مجمع الزوائد ج 9 ص 114

24 مسند أحمد ج 1 ص 179، ج 3 ص 32

related Prophetic opinions and practice which have been lost – hence, sometimes the opinion has survived as a Companion's position, but it is in fact a Companion relating a Prophetic ruling. *Qiyās*-based opinions, on the other hand, are only considered when there is no evidence of a scriptural rule (be it from the Qur'an or the Prophet); the Companions themselves used *qiyās* in order to reach rulings when there was no scriptural ruling. How might one explain those occasions when a Companion's opinion diverges from an opinion based on *qiyās*? For Abū Ḥanīfa, therefore, a *qawl al-ṣaḥābī* based on a lost Prophetic ruling should take precedence over a *qiyās* when these two disagree. If the *qawl al-ṣaḥābī* is based on *qiyās*, then his analogical reasoning is equal to that of later scholars, since they are all *mujtahids*, and there would be no reason to give the Companion's *qiyās* precedence to ours. This nuance, Abū Ḥanīfa's opinion implies, is missing in al-Shāfi'i/Aḥmad's view.

Mu'ayyadi explores the evidence for these two opinions and ultimately rejects both. For the opinion of al-Shāfi'i and Aḥmad, the main proof is the Prophetic saying, "my Companions are like stars..."⁴¹ This was used as proof of the *ijmā'* of the Companions also, and for Mu'ayyadi it is a weak report. However, he says, even if the report was accepted, then the most it could actually demonstrate is that they are worthy of being followed as a group – *al-murād al-muqalladūn* as the text says. The Prophet is addressing the Companions, and it has been agreed (i.e. there is an *ijmā'*) that one Companion's opinion cannot be given preference over another's. Therefore, the most this weak report could mean is that, as a group, the Companions can be followed. Abū Ḥanīfa's supposed opinion is summed up "if [the *qawl al-ṣaḥābī*] opposes *qiyās*, then there must have been a transmitted proof" (a *ḥujja naqliyya* – which has been left unrecorded, and which supports the Companion's view). Mu'ayyadi's response is that if this is true for a Companion, then it could also be true of anyone else: the generations following the Companions could be basing their opinions on lost pieces of evidence when their opinions conflict with *qiyās*. Having access to lost Prophetic opinions is not exclusive to the Companions. Abū Ḥanīfa's argument does not protect the *qawl al-ṣaḥābī* at all, but instead dilutes its authority, as, logically, the proof must be extended to the opinions of those who lived in the generations after the Prophet but might have access to Prophetic opinions not recorded elsewhere.

If the opinions of the Companions are not, in themselves, counted as proofs, then what of the opinion of 'Alī? In section [5.5] Mu'ayyadi explores this issue. For Shi'i jurists generally – including Zaydi jurists – 'Alī's position as a legal authority is a defining feature of the tradition. Therefore, for Zaydis, it would seem that one Companion's opinion (i.e. that of 'Alī) must be counted as a proof. One view is that 'Alī's opinion is authoritative on issues on which the scriptural texts are unclear and *ijtihād* is necessary: on such issues there may be differing opinions, but there is only one true opinion (*fīmā al-ḥaqq fihi wāḥid*). This view would seem to restrict 'Alī's opinion to *ijtihādī* matters.

Some Zaydis (and Shi'is more broadly), though, may feel this is a condition placed on 'Alī's opinion having probative force and therefore lean towards a second view: 'Alī's opinion has probative force unconditionally (*muṭlaqan*, i.e. whether the matter is open to *ijtihād* or not).

Mu'ayyadi discusses a third opinion in relation to the *ijtihād* of the Companions. Given that the Companions are all considered *mujtahids*; if one of them gave an opinion which is not based on a scriptural ruling, then it must have come from their personal *ijtihād*. In *ijtihād* theory, there is a dispute over whether, when the opinions of the *mujtahids* diverge, whether the various opinions of *mujtahids* can all be considered correct (*kull mujtahid muṣīb* – the position known as *taṣwīb*), or "the truth is with one of them" (*al-ḥaqq fi l-wāḥid*). If one holds to the *taṣwīb* doctrine,

[6]

فصل

ولا يختص الإجماع بالصحابة للأدلة السمعية، وقيل يختص لانعقاده منهم قبل مجيء التابعين وغيرهم على أنّ ما لا قاطع فيه فإنه يجوز فيه الاجتهاد، فلو أجمع غيرهم لم يجوز فيه الاجتهاد وأدى إلى بطلان الأول أو تعارضهما. قلنا: ذلك جارٍ في الصحابة لإجماعهم على جواز الاجتهاد في المختلف فيها. والحل أنّه يجب أن يكون مشروطاً بعدم القاطع وأكثر القضايا العرفية سيما السوالب تنفيذ ذلك.

then 'Alī's opinion cannot have probative force if he was acting as a *mujtahid*, because for such a person, all *mujtahids*' opinions are equally correct. To hold the *taṣwīb* doctrine and to remain within the Shi'i doctrine of privileging 'Alī's doctrine, then one must believe that 'Alī's opinion is not restricted to matters of *ijtihād* (i.e. he is not a *mujtahid* among many *mujtahids*). His legal authority must be unconditional. If, on the other hand, one does not believe in *taṣwīb*, and instead considers only one *mujtahid*'s opinion correct (and in the case of 'Alī and the Companions, the correct opinion is always 'Alī's) then this also cannot be because of his *ijtihād*. *Ijtihād* by definition is the personal, and fallible, efforts of the jurist: to say 'Alī's *ijtihād* is always correct is, in effect to say that he is free from error (*'iṣma*), and hence he is correct without conditions (*muṭlaqan*). Mu'ayyadi references four Prophetic reports as evidence that 'Alī is free of error (he cites them in abbreviated form giving the first few words of each report expecting the reader to know the rest of the report by heart – *al-ḥaqq ma'a 'Alī*⁴²...*allāhum adir al-ḥaqq ma'* 'Alī⁴³...*anā madīnat al-ʿilm*⁴⁴...*anta minnī bi-manẓilat Hārūn*⁴⁵...). All of these are widely transmitted and prove that 'Alī has the quality of being free of error, just like the Prophet himself. Therefore, he cannot be thought of as a *mujtahid* like the other Companions.

Finally, there is the opinion that 'Alī's view is not a proof above those of the other opinions (i.e. the view of the non-Shi'is). This is because the other Companions used to discuss legal issues with him, and he did not condemn them for their views, and he did not try and disprove their views. That is, they were all *mujtahids* who accepted each others' opinions as valid. 'Alī's opinion is, then, nothing special under such a perspective.

Section [6] is a discussion around the nature of the issue on which the Companions form a consensus. Mu'ayyadi is, here, employing arguments from the wider (mainly Shāfi'i) *uṣūl* tradition without explicitly referencing them, and hence to understand this passage, an excursus is necessary. Some scholars argue that there can only be a consensus on "scriptural indicators" (*al-adilla al-sam'iyya*) and can only be valid when the participants are Companions of the Prophet (*ijmā' al-sahāba*). The Zāhiri school is specifically mentioned in Shāfi'i *uṣūl* texts as holding this view, though Mu'ayyadi introduces their argument simply by the phrase "it is said..." (*qīl*). Those who hold this view (it is claimed) put forward an argument for their position which, they claim, demonstrates the illogicality of the mainstream view (namely that consensus can happen in any generation and can be on any issue for which *ijtihād* is permitted). The Companions formed a consensus that *ijtihād* is permitted on legal issues for which there is no definitive and certain indicator (*mā lā qāṭi' fihī*). Say the Successor generation or another group (*al-tābi'in wa-ghayrihim*) form a subsequent consensus on a particular legal norm for something the Companions considered an *ijtihādī* matter. When this later consensus is formed, the issue ceases to be an issue "on which there is no definitive and certain indicator" (*ijmā'* is, supposedly, such a definitive indicator). *Ijtihād* is now not permitted on this legal topic. Now, so the arguments goes, either the second consensus invalidates the first consensus (*buṭlān al-awwal*) or the two consensus contradict each other (*ta'āruḍihimā*). That is, the Companions say *ijtihād* is permitted on the issue whilst the Successors say it is not permitted. This, it is implied, means that allowing the consensus of subsequent generations to be a proof makes the consensus of earlier generations (particularly that of the highly respected and authoritative Companions) invalid. Therefore (it is implied but not explicitly stated), consensus can only be a valid proof when it occurs on issues which are non-*ijtihādī* (i.e. "scriptural indicators", *al-adilla al-sam'iyya*) and amongst the Companions. Mu'ayyadi's refutation of this argument in section [6] (i.e. the passage following *qulnā*) is that this is true of the Companions themselves. They could agree that an issue was *ijtihādī* and there-

[7]

فصل

إذا قال بعض وسكت الباقيون قبل تقرر المذاهب.

[أبو علي]: أنه حجة.

الشافعي: لا إجماع، ولا حجة، وعنه خلافه.

ابن أبي هريرة: إن كان مفتياً، وعلى شرط الانقراض.

لنا: يبعد سكوت الكل مع اعتقاد المخالفة عادة فكان ذلك في إفادة الاتفاق ظناً كقول ظاهر الدلالة فينهض دليل

السمع، أيضاً ربما سكت لتوقف، أو خوف، أو توفير، أو لم يجتهد، أو خالف فيروي.

قلنا: علم من عاداتهم ترك السكوت في مثله فهو حينئذ خلاف الظاهر.

[7.1]

القائل بأنه إجماع سكوتهم دليل ظاهر في موافقتهم فكان إجماعاً.

قلنا: لا يكفي الظهور إلا في كونه حجة.

fore subject to different opinions (*al-mukhtalaf fihā*), and then come to a consensus on a legal norm for that issue. The issue is not between generations, he argues, but is in the nature of having issues which are disputed, and then a subsequent agreement emerging. The solution is to say that one of the conditions of *ijmā'*'s validity is that there is no definitive or certain indicator for that issue (*mashrūṭan bi-ʿadam al-qāṭiʿi*). This reasoning follows most everyday statements as well (*al-qaḍāyā al-ʿurfiyya*), particularly negative ones (*al-sawālib*): a statement's validity can be dependent on the maintenance of some aspect of its assertion. The wider *uṣūl* tradition gives an example⁴⁶ (which is not given by Mu'ayyadī but is cited in the texts he is echoing): the statement "there is no sign of wakefulness in him" (when applied to someone sleeping) is a negative statement. It does not explicitly indicate that there will never be any "sign of wakefulness in him"; it is true as long as he is sleeping. Similarly, the validity of the negative statement "there is no definitive indicator for this matter" at one point in time does not establish its permanent validity. Its continued validity is dependent on the continued non-appearance of a definitive indicator. The mistake opponents (who in other texts are identified as the *Ẓāhirīs*) are making is thinking that a consensus on a statement (particularly on a negative statement) must be unconditional: consensus on a statement (by the Companions or any other generation of scholars) can – like everyday assertions – be dependent for its validity on the continued existence of a particular state of affairs. Validity need not imply a permanent, unconditional state.

Section [7] deals with the disputed topic of *ijmā' sukūṭi* ("tacit consensus") – that is, if a scholar declares a legal norm and the rest of the (scholarly) community is silent and raises no objection, is this, in effect, a consensus? Mu'ayyadī is most concerned with the period before the establishment of the legal schools (so, the period of the Companions and Successors' generations); once the schools are established, an acceptance of legal variation is built into the system. Three views are entertained:

- 1) Some (Abū 'Alī al-Jubbā'ī, d. 303/915) argue that the silent *ijmā'* is a legal proof (*ḥujja*);
- 2) others (al-Shāfi'ī) argue that it does not count as an *ijmā'* and it is not a proof (*lā ijmā' wa-lā ḥujja* – characteristically, the opposite view is also transmitted from Shāfi'ī – i.e. that it is an *ijmā'* and it is a *ḥujja*);
- 3) Abū 'Alī b. Abī Hurayra (d. 345/956), the early Shāfi'ī scholar, allowed it to be a legal proof on two conditions: (i) the person making the statement must be acting as a *muftī*, and (ii) there needs to be a gap in time after the declaration (*bi-sharṭ al-inqirāḍ*) and before the *ijmā'* can be confirmed.

The crucial distinction which Mu'ayyadī draws (and which can also be found in the wider *uṣūl* tradition) is between *ijmā' sukūṭi* being a form of *ijmā'*, and it being a legal proof (*ḥujja*). He wishes to argue that tacit consensus is a proof, but it does not establish with certainty that an *ijmā'* has occurred. The dispute is, then, around how strong an indicator a tacit consensus might be. There are those who argue that it is so strong that it almost establishes a consensus. The evidence for this is that it is extremely unlikely (*yabʿud*) that the pre-*madhhab* scholars would, as a matter of custom (*ʿādatan*) disagree with a fellow scholar's statement but remain silent. However, it could be argued that their silence was due to a number of extraneous factors: the scholar might have not arrived at a specific conclusion (*tawaqquf*), his fear prompted him to stay silent (*khawf*), or he simply relied on other scholars (*tawfīr*); he may not have performed his own personal *ijtihād* yet, or he may disagree but intends to transmit his opinion separately. But, Mu'ayyadī concurs, they would not keep silent – the apparent conclusion (*ẓāhir*) one can draw from their silence is that they concur with their fellow scholar's declared legal norm. Whilst some think of this "ap-

[7.2]

أبو علي: بعد الانقراض لضعف الاحتمالات فيكون إجماعاً.
والجواب تقدم.

ابن أبي هريرة: العادة في الفتيا لا في الحكم.

قلنا: فرض المسألة قبل استقرار المذاهب، وهذا إن أفق وانتشر وإلا فعدم الإنكار لا يدل على الموافقة قطعاً لتجويز الأقوى [الذي] أدلهم ولم يقل إلا إذا كان مما يعم به البلوى إذ عمومها يقتضي حصول العلم به.

[8]

فصل

وانقراض العصر لا يشترط.

وخالف أحمد وابن فورك مطلقاً، والجويني فيما مستنده قياس، وأبو علي في السكوتي.
لنا: قام الدليل بدونه.

قيل: وافق الصحابة أمير المؤمنين عليه السلام في بيع أم الولد ثم رجع وردّ بالمنع.²⁵

الجويني: يلزم إبطال النص بالاجتهاد إذا اطلع على خبر صحيح.

قلنا: إنما ترك العمل به للقاطع لا للقياس كعدد الانقراض.

أبو علي: يمكن أن يكون السكوت للنظر فإذا مات علم الرضا.

قلنا: إن دل عليه وجب الحصول قبل الموت وإلا لم يحصل بالموت لاحتمال أنه مات على ما كان عليه.

parent conclusion” as sufficient to establish an *ijmā'*, Mu'ayyadī argues that since their silence only establishes an apparent consensus and not an actual consensus, *ijmā' sukūti* is only a proof (*ḥujja*) and not a definitive proof (*lā yakfī l-zuhūr illā fī kawnihi ḥujja*). It is not an *ijmā' per se* but an apparent indication of an *ijmā'* – and this has reduced legal force.

Finally (in section [7.2]) Mu'ayyadī tackles the opinion of Abū 'Alī al-Jubbā'ī, who had argued that if a Companion gives a *fatwā*, and there is no objection, then, after a suitable time lapse, an *ijmā'* can be declared. The time lapse is designed to give all those alive at the time of the declaration the chance to object. Mu'ayyadī's reply to this position repeats the previous reply – namely: not registering an objection does not mean there was no objection. In reference to Ibn Abī Hurayra's stipulation that the person should be a *muftī* and give fatwas (*futyā*) in and of itself establishes the *ḥujja*/proof of *ijmā' sukūti*. When someone issues a *fatwā*, the lack of objections to that *fatwā* does not in itself indicate that everyone agrees with the *fatwā*. Since a *fatwā* is not an executable legal decision (*ḥukm*), but is just a scholarly opinion, it is always possible that there is a stronger opinion which a scholar has devised but does not explicitly state (*lam yaqul*). The only case where this would not be possible is if the *fatwā* concerned a matter which was a “common necessity” (*ya'umm bihi al-balwā*). That is, if the *fatwā* concerns a matter which is essential to day-to-day community life, then a scholar would be highly likely to voice his (different) opinion. “The common nature of the necessity requires that one knows [if an alternative opinion] exists.” (*'umūmuhā yaqtaḍi ḥuṣūl al-'ilm bihi*). So, if silence is the community response to a *fatwā* on an issue of everyday necessity, then this is a very strong piece of evidence that a consensus has been formed; this is because when it comes to matters of everyday necessity, a scholar who disagrees with the *fatwā* would not keep silent.

Section [8] discusses the condition that when all scholars agree (*wifāq*) upon an issue, must one wait until they have all died (“the epoch has passed” – *inqirāḍ al-aṣr*), or can a consensus (*ijmā'*) be called immediately? There is dispute here. Mu'ayyadī's position is that there is no condition (i.e. the consensus does not require the passing of the epoch), but he mentions 3 other opinions:

- 1) Aḥmad Ibn Ḥanbal and Ibn Fūrak (d. 406/1015) claim the passing of the epoch is an absolute condition.
- 2) Al-Juwaynī (d. 478/1085) claims it is a condition when the matter upon which there is a claimed agreement was derived through the application of analogy (*mustanaduhu qiyās*).
- 3) Abū 'Alī states that it is only a condition for “tacit consensus” (*fī [al-ijmā'] al-sukūti*) and not for consensus proper.

Mu'ayyadī proceeds to dispute each of these three opinions. For the first, he simply states that the indicator (of *ijmā'*) stands with or without the epoch's passing. An opponent might argue that there are instances where a consensus might have been claimed, but that later some of those agreeing changed their mind (the example given is 'Alī's alleged change of mind over the prohibition of selling a slave woman who has mothered her master's child – the *umm walad*).⁴⁷ Mu'ayyadī (echoing the *Minhāj al-uṣūl* here)⁴⁸ simply denies that, in such instances, there was an *ijmā'* in the first place. For the second view (held by al-Juwaynī), Mu'ayyadī cites the argument that if, at some later time, a reliable report (*ḥabār ṣaḥīḥ*) was to appear, the earlier *ijmā'* based on a *qiyās*-derived norm would be able to invalidate a reliable revelatory text (*ibṭāl al-naṣṣ bi-l-ijtihād*) – which is, of course, not permitted since uncertain indicators (like *ijtihād*) cannot overrule certain indicators – and this is the same however much of the time period (full or partial) has elapsed. On the third view (attributed to Abū 'Alī), Mu'ayyadī questions the conclusion that

[9]

فصل

والتابعي المجتهد معتبر مع الصحابة، فإن نشأ بعد إجماعهم فعلى انقراض العصر. لنا: دخوله تحت أدلة الإجماع.

[9.1]

قالوا: ﴿لَقَدْ رَضِيَ اللَّهُ عَنِ الْمُؤْمِنِينَ إِذْ يُبَايِعُونَكَ تَحْتَ الشَّجَرَةِ﴾²⁶، «لو أنفق أحدكم [مثل أحد ذهباً ما بلغ مد أحدهم ولا نصيفه]»²⁷.

قلنا: يدل على فضلهم.

[9.2]

قالوا: أنكرت عائشة على أبي سلمة بن عبد الرحمن مجارة الصحابة.²⁸

قلنا: ممنوع، ولو سلم فبعد سبق الإجماع، ولو سلم فلعدم بلوغه الرتبة، ولو سلم فقولها غير حجة، ولو سلم فعارض بانتصاب التابعين للفتيا ورجوع الصحابة إليهم.

[10]

فصل

وخلاف الواحد يحرم الإجماع وخالف ابن جرير والبغدادية. وقيل: هو حجة فقط. لنا: لم ينتهض إلا في الكل.

[10.1]

الأول: يصدق «المؤمنين» على الأكثر.

قلنا: مجازاً.

قالوا: «عليكم بالسواد الأعظم».²⁹

قلنا: يوجب عدم الالتفات إلى مخالفة الثلث.

[10.2]

الثاني: لم تناوله الأدلة ويبعد أن يكون الراجح متمسك بالخلاف.

قلنا: لا وجه للاستبعاد إذ الحق يعرف بالرجال.

²⁶ Qur'an 48:18.

²⁷ سنن أبي داود ج 2 ص 404

²⁸ كتاب الموطأ ج 2 ص 589

²⁹ مسند أحمد ج 4 ص 278

a scholar dying means they approved (*riḍā*) of the legal norm. If approval can be deduced from his death, then it could equally be acquired before his death, and the restriction to tacit consensus by Abū 'Alī is meaningless. The implicit basis for this argument is that approval is an act; it cannot be determined from an act's absence by one of the supposed consensus constituencies (*mujmi'in*).

Another issue with the restriction of consensus to the Companions mentioned in section [9] is that there were "Successor *mujtahids*" – that is, scholars who were not contemporaneous with the Prophet himself but were contemporaneous with the Companions. Some (including Ṣāḥibīs) might argue that the Successor *mujtahid* is excluded because he is not a "Companion"; Mu'ayyadī sees no reason to exclude him. Following his Zaydī doctrine, the Companions are obviously respected, but not so much as to over-rule the opinion of *mujtahids* from Successor generations. The argument that God (in, for example, "God has approved of the believers")⁴⁹ and his Prophet (in a report: "if anyone of you were to spend gold in charity equal to Mount Uḥud it would not be equal to a *mudd* or even half of what my Companions have spent")⁵⁰ have indicated the Companions' special status is brushed aside: they simply indicate that they were honourable and worthy (without denouncing Successors' special status). The counter example that 'Ā'isha disapproved of Abū Salama's tussles with Companions⁵¹ is refuted by a barrage of counter arguments: his opinion came after *ijmā'* had been established; Abū Salama had not yet reached the level of *ijtihād*; 'Ā'isha's opinion is not a proof in any case; and finally, if one were to accept this, it would contradict the fact that the Successors used to give fatwas, and the Companions used to consult them.

Section [10] covers discussions around whether or not consensus has to be absolute. For Mu'ayyadī, if a single person in the *ijmā'* constituency disagrees, then *ijmā'* cannot occur. Baghdādī scholars and Ibn Jarīr (al-Ṭabarī, d. 310/923) disagree. Yet others say that whilst a near-but-not total agreement creates a legal proof (*ḥujja*) it is not consensus proper. For Mu'ayyadī, for *ijmā'* to be taken into account it must be total. The roots of this stipulation, one suspects, are in the Shi'ī insistence that the supposed majority view concerning the first caliphate (i.e. Abū Bakr taken over 'Alī) has no legal validity in itself. He dismisses various arguments in favour of following the majority. The saying that "the term 'believers' can be truthfully applied to the majority" is a case of non-literal usage (*majāz*). Elsewhere in the *uṣūl* tradition, this is highlighted as a case of overwhelming majority (*istighrāq*), which cannot act as a proof for an element of *ijmā'* theory. The saying of the Prophet "you should follow the greatest majority" (*'alaykum bi-l-sawād al-a'ẓam*)⁵² is also cited. Mu'ayyadī, again following the *Minhāj*,⁵³ argues that this hadith actually indicates that total agreement is required. If one thinks that the phrase *al-sawād al-a'ẓam* can mean a simple majority, then this would mean one can ignore the opinions of a third of the community. Clearly, Mu'ayyadī (following the *Minhāj*)⁵⁴ thinks this is a weak argument. A further argument (10.2) is that it is unlikely that, when indicators of a legal norm conflict, the preference should go to the most popular opinion. Mu'ayyadī's answer is that one shouldn't consider it unlikely that the minority opinion is the truth – truth can be assessed by the individuals who transmit it, not by the number of such individuals.

[11]

فصل

وفاق من سيوجد لا يعتبر وإلا لم يعلم إجماع، ولا اعتداد بمن خالف فيه.

[12]

فصل

والمثأول معتبر لقضاء الخبر باعتباره.

[12.1]

وقيل: لا، كالكافر والصبي.

قلنا: ليس الكافر من الأمة، والصبي قاصر.

[12.2]

وقيل: يعتبر في حق نفسه إذ هو كإقرار الفاسق والكافر.

قلنا: لو قيل لكان له لا عليه.

[13]

فصل

إذا اختلفوا فمات إحدى الطائفتين أو كفرت أو بيعت تصرّحاً يصير قول الباقي حجة لأنهم حينئذ إما الأمة أو المعتبرون منها.

[14]

فصل

وما يتوقف حجية الإجماع عليه كوجود الباري فلا يصح الاستدلال به عليه للزوم الدور، فإما الدنيوية كالأراء والحروب فتتمسك به فيها لأنّ الدليل لم يفصل، وللقاضي فيها قولان.

[15]

فصل

وظهور مخالف نادر بعد علم الإجماع لا تقدح إذ لا يعدل عن المعلوم إلى المظنون، ولا ينبغي أن يقع فيه خلاف وإلا فما سبق.

In section [11], Mu'ayyadī makes the simple point that the consensus cannot include those scholars who are yet to be born, for if that were so, consensus could never be reached, and there would be no means of determining who disagrees with a legal norm.

Section [12] discusses whether the individual who has a deviant belief (i.e. a *muta'awwil* – but not so deviant that he ceases to be a Muslim). Mu'ayyadī considers such individuals to be included in the *ijmā'* constituency, on the basis that if the *muta'awwil* gives an account of an event, his word would be taken into account; so therefore his opinion in terms of the matters under consideration for consensus should also be taken into account. Opponents might say he should not be included, just as we do not include children and unbelievers in the *ijmā'* constituency. Mu'ayyadī's reply is that he is neither an unbeliever (and outside the community) nor he is a child (who is not yet legally responsible), so these rules should not apply to him (i.e. the analogy is unsound). The final counter argument involves the concession that, just as the confession of a miscreant or an unbeliever are accepted, so the statement of a deviant regarding his own situation (*fī haqq nafsihi*) can be accepted – but not, it appears, on matters of general importance. Mu'ayyadī's reply is that such a position would actually support his inclusion, not exclude him – presumably because, on the matter of whether he is a Muslim (and hence to be included in the *ijmā'* constituency), his word (presumably saying that he is a Muslim) should be accepted; and once this is accepted, his view is to be counted in the consensus on other matters as well. Mu'ayyadī's opinion (i.e. that the *muta'awwil* should be part of the *mujmi'in*) reflects, perhaps, his Shi'i perspective – to exclude individuals on the basis of theological variation is likely to mean Shi'i scholars being excluded from the consensus.

Section [13] entertains the hypothetical situation where the community disagrees on an issue splitting into two camps. If the members of one camp all die, or fall into unbelief, or give allegiance to someone who is not a legitimate leader (i.e. outside of the *Ahl al-bayt*), then the members of the other group become the *ijmā'* constituency on their own, and therefore an *ijmā'* is immediately formed.

For the arguments of consensus to be valid, certain truths must be established – such as the existence of God. One cannot “prove” that God exists by *ijmā'* because that would lead to circularity (*luzūm al-dawr*). If *ijmā'* relies on the existence of God for its validity, one cannot establish the existence of God via *ijmā'* (section [14]). Trivial worldly matters (*al-dunyawiyya*), such as battle tactics, are available for *ijmā'*, because the proof for *ijmā'* does not exclude them. This appears to be Mu'ayyadī's opinion, though he is not explicit. He does mention that al-Qāḍī ('Abd al-Jabbār, d. 415/1025) had two opinions (i.e. that *ijmā'* can be applied to these worldly matters; and that it cannot). Elsewhere in the *uṣūl* tradition, those who say they are subject to *ijmā'* argue that the texts are general in terms of reference, applying to all items where it is logically possible; those who argue against say that the Prophet himself excluded such things with his saying “you know more about the affairs of your world (than me)”⁵⁵ – meaning that such matters can change by situation and therefore no certain, invariable rule could be established by *ijmā'*.

Furthermore, an occasional subsequent random opinion, after an *ijmā'* has been established, does not invalidate the previous *ijmā'* (section [15]); it does not make it any less powerful as an indicator (“it does not turn it from something known (*al-ma'lūm*) to something presumed (*al-maẓnūn*)”), and it does not mean that the past *ijmā'* is suddenly cast into doubt.

If the community agrees that the true opinion is limited to one of two opinions, can it, at some later time, agree that one of those opinion is the true one? The question here is whether the later

[16]

فصل

اتفاق أهل العصر الثاني على أحد قولي أهل العصر الأول بعد استقرار خلافهم. قال أئمتنا: يجوز، وقال أحمد والأشعري: يمتنع. وعلى الأول قبل إجماع، وقيل حجة، وقيل لا. لنا: عموم الدليل، وأيضاً قد وقع كاختلاف الصحابة في بيع أمهات الأولاد ثم أجمع على المنع،³⁰ وفي الصحيح إنَّ عمر كان نهى عن المتعة ثم صار إجماعاً.³¹ الأشعري: العادة تقضي بامتناعه. قلنا: لا نسلم وقد وقع.

[16.1]

قالوا: يلزم من وقوعه حجته فيحصل التعارض إذ اختلافهم إجماع على التخيير. قلنا: ممنوع ولو سلم فمع انتفاء القاطع.

[16.2]

قالوا: «أصحابي كالنجوم بأيهم اقتديتم اهتديتم».³² قلنا: ضعيف، سلطنا فانلخاطاب مع العوام الذين في عصرهم. المجوز: وليس بحجة، لو كان حجة لتعارض الإجماعان وقد تقدم.

[17] فصل

والاتفاق بعد الخلاف المستقر كما قبله، وكل من اشترط انقراض العصر قال إجماع.

[18] فصل

قيل: إنَّ مثل قول الشافعي أنَّ دية اليهودي ثلث دية المسلم³³ يصح التمسك فيه بالإجماع لاشتمال الدية الكاملة أو النصف عليه، وليس بصحيح لأنَّ قوله مركب من إثبات القليل ونفي الزيادة، والإجماع إنما تدل على وجوب الثلث، فلا بد على نفي الزيادة من دليل، فإن أبدى مانع أو نفي شرط أو استصحاب فليس من الإجماع.

السنن الكبرى ج 10 ص 348 30

شرح السنة ج 9 صص 99-100 31

32 30 ص 2 ج 2 من مسند عبد بن حميد ج 2 ص 30

minor variations.

33 113 ص 6 ج 6 كآب الأم ج 6

ijmā' on one opinion would, in effect, be breaking the earlier *ijmā'* that there were two acceptable opinions (section [16]). Mu'ayyadi and the other Zaydi scholars (*a'immatunā*) consider this quite possible; others (Ibn Ḥanbal and al-Ash'arī, d. 324/936) prohibit it. Those who consider it permitted for the later community to agree on one of the opinions, there are those who say it is only a lesser proof (*qīl ḥujja*), and there are those who do not even consider it a *ḥujja*. Mu'ayyadi's arguments for his own opinion are that the proofs for *ijmā'* do not preclude this – they are general and include it; and he points out that it has, in fact happened in the history of Islam. The Companions differed over the sale of the slave who bears the master's child; and then they agreed;⁵⁶ similarly, 'Umar forbade temporary marriage (*mut'a*)⁵⁷ whilst others allowed it – but it became an *ijmā'* that it was forbidden. Al-Ash'arī supposedly had the opinion that custom dictates that it is impossible, but Mu'ayyadi refutes this. The objection goes: "if it happened, then it must have probative force", and if that is the case, then it contradicts the earlier consensus that, on the issue under investigation, choice between the various opinions was permitted (*al-takhyīr*) (section [16.1]). Mu'ayyadi rejects this too – because the earlier *ijmā'* implied that there would be choice as long as there is no definitive proof of one option or the other. When that definitive proof comes (in the form of an *ijmā'* on one of the options), then the matter is settled without contradiction. If the Companions agreed that there could be a choice between two options in a particular question, and there was a later consensus on one of those options, then this later consensus must be more than simply a proof (*ḥujja*), Mu'ayyadi argues: it must be a definitive statement (*qāṭi'*). The reasoning here is that the Companions' agreement on choice (*takhyīr*) means that each of the two opinions has an indicator which is non-definitive (i.e. the two proofs are merely a *ḥujja*). If the later consensus on one of those opinions is also classed as a non-definitive proof (i.e. is also a *ḥujja*), then one is facing a conflict between the two *ijmā'*s, and this cannot be (section [16.2]); rather, Mu'ayyadi argues, the earlier consensus was for the people at the time of the Companions, and the later consensus is a definitive statement (*qāṭi'*).

If the matter is as al-Mu'ayyadi argues, then anyone who argues that the epoch must pass before an *ijmā'* can be claimed, will also agree that a later agreement on one of two opinions will form an *ijmā'* only when that later epoch has passed. He provides no reasoning for this view, but it would seem uncontroversial (section [17]).

Someone had argued, perhaps as a clever aside, that al-Shāfi'i's opinion that the compensatory payment (*diya*) for a Jew is one third of that for a Muslim⁵⁸ was based on *ijmā'* (section [18]). The argument was that the two opinions common before al-Shāfi'i (namely that the *diya* of a Jew is either equivalent to that of a Muslim, or it is half that of a Muslim) had formed an *ijmā'*. The consensus was that holders of both opinions agreed that one third was valid – what they differed over was the amount above one third of a Muslim's *diya* which should be set. Hence, al-Shāfi'i's opinion of one third is something they would both agree on, and therefore his opinion is supported by *ijmā'*. The rebuttal of this argument is not too difficult. Al-Shāfi'i's opinion is made up of two elements, Mu'ayyadi states: first there is the opinion that one third is the minimum *diya*; and second the opinion that the *diya* is not more than one third (*nafy al-ziyāda*). Whilst there may be *ijmā'* on the first (namely, the fact that one third is contained within a whole and within a half), the second element (the view that it is not more than one third) needs a consensus. Even if there was some form of an indicator to say the *diya* of a Jew is not more than one third, this would never be based on *ijmā'*, but rather on some other type of indicator. Mu'ayyadi concludes, then, that Shāfi'i's opinion is not based on *ijmā'*, and to claim that it is, is invalid.

[19]

فصل

لا إجماع إلا عن مستند ولو قياساً.

[19.1]

وقيل: لا يجوز.

وقيل: لم يقع.

وقيل: يجوز إن كان جلياً.

صاحب المختصر: يقع ولا يكون حجة.³⁴

وقيل: يجوز جزافاً.

[19.2]

لنا: القطع بالجواز كغيره والوقوع لتحريم شحم الخنزير وكحد شارب الخمر ثمانين، وإجماعهم مستحيل بدون المستند عادة، ولأنه يستلزم الخطأ.

[19.3]

الأول: الإجماع على جواز مخالفته.

قلنا: قبل الإجماع اختلف فيه.

[19.4]

المانع بالوقوع مختلف فيه، وذلك مانع من انعقاد الإجماع عنه.

قلنا: لا نسلم، ويعضده إجماع اليهود والنصارى على قتل عيسى.

[19.5]

صاحب المختصر: من «سبيل المؤمنين» إثباته بالاجتهاد، وجواز القول بخلافه إذا لاح اجتهاد آخر.³⁵

قلنا: من سبيلهم إثباته بطريق كيف كان، وتجويزهم القول بخلافه قبل الاتفاق، وأيضاً يعتبر حينئذ سبيل المؤمنين.

[19.6]

المجيز جزافاً: لو كان فهو الحجة.

قلنا: تكون فائدته سقوط البحث، وحرمة المخالفة، [ولا] يلزم إلا يصح عن سند وهو خلاف الإجماع.

المحصل في أصول الفقه ج 4 ص 210 34

المحصل في أصول الفقه ج 4 ص 211 35

What sort of proposition can there be consensus about? Section [19] is the beginning of Mu'ayyadi's discussion of this issue. First, he discusses whether the consensus must be upon a proposition supported by a recognised source (*mustanad*). His own position is that any valid consensus must be based on a source, and even analogical reasoning can be a source (*wa-law qiyās*). There is debate, though, on whether a consensus can be formed on a proposition derived through *qiyās* (the positions are mentioned one by one in section [19.1]). Some say it is not possible for such a consensus to emerge (presumably since *qiyās* is by its nature a subjective judgement, and hence one could not form agreement on something so subjective). Some say it has never happened (so it is not an issue). Some say it is possible but only on an analogy which is "obvious" (*jālī*) and indisputable. The "author of the *Mukhtaṣar*" (the fourth/tenth century traditionist from Khurāsān, Muḥammad b. Muḥammad b. Aḥmad b. Ishāq al-Ḥākim al-Kabīr, d. 378/988) argues agreement can occur, but, for him, consensus on a proposition derived from analogical reasoning does not constitute a proof (*ḥujja*).⁵⁹ Finally there are those who argue that the scholars could agree haphazardly (*jizāfan*) upon something which has no underpinning recognised source. Mu'ayyadi's position is that not only is it possible for consensus to occur on a proposition agreed through *qiyās*, it has actually happened. He gives examples of when it has happened (eating pig fat; the punishment for the wine-drinker). In both cases, there is a legally valid basis for the opinion (*mustanad*) on which there has been agreement, and it is impossible, on the basis of custom, for agreement to happen without this legally valid basis.

Mu'ayyadi then entertains a series of potential objections. Say there is a consensus that it is allowed to contradict an earlier *qiyās*-based consensus [19.3]. This, Mu'ayyadi argues, would effectively be arguing that the earlier agreement was an error; this constitutes an internal contradiction – since you cannot say that the earlier consensus was an error (and thereby demonstrate that *ijmā'* is fallible) and then prove this by appeal to (fallible) *ijmā'*. Say, there is another objection: the dispute over whether consensus on the basis of an analogical reasoning has ever happened means there is no way an *ijmā'* on analogical reasoning can be treated as a reliable source [19.4]. Here, Mu'ayyadi does not accept the premise: there are instances of it happening in the past. The classic example is that the Jews and the Christians agreed, on an analogical basis, that the Jesus was killed – so it can happen. The reason their agreement can be questioned by a later agreement is because, unlike the *ijmā'* of the Muslims, their *ijmā'* is not immune from error. Another objection is raised by al-Ḥākim al-Kabīr ("Ṣāhib al-Mukhtaṣar"): The Qur'an stipulates that one should follow "the way of the believers" (*sabīl al-mu'minīn*)⁶⁰ [19.5].⁶¹ This is understood to be a useful proof for *ijmā'* (since what the community agrees upon is *sabīl al-mu'minīn*). Now, their first conclusion – based on *qiyās* – was reached through the personal juristic reasoning (*ijtihād*) of each member of the *ijmā'* constituency; anything which was discovered through *ijtihād* is subject to disagreement on the basis of another *ijtihād*. Therefore, agreement on any *qiyās*-based conclusion is both an *ijmā'* and it is subject to disagreement. This, for him, disqualifies *ijmā'* on a proposition based on *qiyās* as a proof. Mu'ayyadi's response is that *sabīl al-mu'minīn* means "whatever way they use to prove a proposition upon which they subsequently form a consensus". They express disagreement before the agreement occurs, and when there is agreement, the *sabīl al-mu'minīn* is taken into account then. The opinion is mentioned that if a consensus happens occasionally or randomly (*jizāfan*), it creates a non-definitive proof (*ḥujja*), and not a definitive one [19.6]. Mu'ayyadi responds to this position by arguing that this so-called non-definitive proof will end all debate and make it prohibited for anyone to oppose it – and this can only happen if it is validated by a source; anything else would make it less than a proper consensus. The

[19.7]

قالوا: صححوا بيع المراضاة³⁶ بلا دليل.

قلنا: بل مع ترك اكتفاء بالإجماع.

[19.8]

قالوا: بل مفوضون وللصواب معرضون.

قلنا: عين النزاع.

[20]

فصل

[20.1]

وإذا أجمع على موجب خبر متواتر، فإن كان جليا وتواتر في عصرهم فهو السند، وإلا فإن علم بدليل أنه السند فكذلك، وإلا فلا يجب أن يكون عنه خلافا لأبي عبد الله لأنه يجوز اجتماع دليلين.

المجموع شرح المذهب ج 11 ص 345 36

opponents bring an example: it was agreed that any transaction in which both the parties consented was deemed valid (*bay' al-murādā*),⁶² even though there is no specific indicator that this is permitted [19.7]. That is, this is a consensus with no underpinning recognised source, but it is counted as a consensus nonetheless. Therefore, it is possible to have an *ijmā'* without a recognised source (contra Mu'ayyadī). Mu'ayyadī replies that actually, the *ijmā'* is not sufficient in and of itself in this example (*tark iktifā' bi-l-ijmā'*); there must be an underpinning recognised source. Elsewhere in the *uṣūl* tradition, the argument is made that the fact that no recognised source is mentioned (like an indicator, *dalīl*) does not mean there is no indicator. It simply means the transmitters have neglected to include the recognised source when transmitting the *ijmā'*. Finally, the opponents argue that there might be a haphazard agreement on something without any reference to a recognised source [19.8]. The members of the *ijmā'* community are delegated (*mufawwaḍūn*) by God to make their judgements; they could all do that without reference to a recognised source, and come to the same conclusion; and since all *mujtahids* are correct (according to Zaydi doctrine), and they all are seeking the right opinion (*wa-lil-ṣawāb mu'riḍūn*). This, Mu'ayyadī points out, is precisely why any consensus must be based on a recognised source. This is the nub of the dispute (*'ayn al-nizā'*), for unless one stipulates that *ijmā'* must be based on a recognised source or method of deriving rulings, one opens the door to the possibility of unfounded agreements by the scholars.

When the scholars agree upon something but the recognised source of their consensus is unmentioned, this presents a particular problem; one needs to know that they agreed not only upon a legal norm but also that this agreement was not haphazard – i.e. it was upon a recognised source (*mustanad*). Section [20] deals with such instances. Say the *ijmā'*-constituency agree upon the legal norm set out in a report which has been transmitted by multiple reliable chains of transmission (*mutawātir*; 20.1). If it is obvious that this is the case, and it reached this high level of transmission (such that it brings certainty as to its contents), then the report itself is the recognised source of the consensus. But, say they agreed upon a legal norm, and that legal norm is contained in the *mutawātir* report, but the report itself was not the basis for their agreement (it was some other indicator). This could have happened, for example, if the report was not known to be *mutawātir* when the earlier generation came to their agreement; their agreement was reached on the basis of another (unrecorded) indicator. In these circumstances, can it still be said that it is known that their consensus was based on a legally recognised source? Mu'ayyadī says it can, because it is known that, had they known of this *mutawātir* report, it would have been the basis of their consensus (*illā fa-in 'ulima bi-dalīlin annahu l-sanad, fa-kadhālika*). The fact that their consensus was on some other basis which is not recorded (and hence cannot be articulated), and that a proper legally recognised source is known (separate from their agreement) means that their consensus is confirmed as being on a legally recognised source, even if it is not the one. This opinion is against that of Abū 'Abdallāh (al-Baṣrī, d. 369/980, a Ḥanafī Mu'tazilī jurist), who clearly believed that the earlier *ijmā'* must encompass both the legal norm and the legally recognised source for that norm. For Mu'ayyadī, though, there can be two equally strong indicators of a legal norm (*ijtimā' al-dalīlayn*), and therefore the earlier *ijmā'* could have been on one indicator (which was left unrecorded), and, for later jurists, it could be on another known indicator (in this case, a *khavar mutawātir*).

[20.2]

وإذا كان المستند آحاديا مجمعا على موجبهِ فهو حينئذ قطعي للدليل.
 وقيل: لا إذ لم تكلف الأمة إلا بالظن كيف كان.
 قلنا: يصح ظن مخطئ فيصدق الإجماع على الخطأ وهي فرع قطعية المتلقى بالقبول.

[21]

فصل

ولا يشترط عدد التواتر لدليل السمع فلم يبق إلا واحد، فقليل حجة لذلك، وقيل لا لعدم صدق الإجماع.

[22]

فصل

إذا اختلفت الأمة على قولين فهل لمن بعدهم إحداث ثالث؟ والحق إن لم يرفع مجمعا عليه جاز، وإلا فلا. مثاله
 الفسخ بالعيوب الخمسة.
 قيل: يفسخ بها.
 وقيل: لا.
 فالفرق غير رافع.
 لنا: لا مخالفة فيه للإجماع حينئذ، فلا مانع منه.

Say the *ijmā'* constituency agreed upon a legal norm, but did not mention a legally recognised basis; it could have been on the basis of *qiyās*, or the apparent meaning of a Qur'anic text, but it was left unmentioned (20.2). Then, say, a non-*mutawātir* report is found (i.e. a *khābar al-wāḥid* – or, as expressed by Mu'ayyadī, *āḥādī* reports) which confirms this legal norm. Can it still be said that their consensus has a legally recognised source and that that report is no longer *ẓannī* but *qaṭ'ī*? For Mu'ayyadī, one can still say this: the fact that there has been consensus on a legal norm, and that same legal norm is expressed in a less-than-certain report means one can be certain that the consensus was on a legally recognised source and the consensus now makes that report certain (*fa-huwa ḥina'idhin qaṭ'ī lil-dalīl*). There are those indicators about which one cannot be certain; but this is not so important, because (they argue) the community can validly follow uncertain indicators (*lam tukallaf al-umma illā bi-l-ẓann kayf kāna*). Mu'ayyadī sticks to his position though. If one allows the report to remain less-than-certain (*ẓannī*) after there has been a consensus on the legal norm contained within it, then one is admitting that the report may be mistaken (*yaṣiḥḥ ẓann mukhtī'*), and therefore the consensus may be on a mistaken legal norm (*fa-yaṣduq al-ijmā' 'alā l-khaṭa'*). *Ijmā'* produces a type of certainty which is wholeheartedly accepted – it cannot be one which has any possibility of error.

How many people have to be members of the *ijmā'* constituency? Usually, membership of the constituency is restricted to *mujtahids*, so the question concerns whether, if the total number of *mujtahids* in the community falls below a certain number, then an *ijmā'* which binds future generations cannot be formed. Section [21] discusses this issue, and following discussions in al-Bayḍāwī's *Minhāj*,⁶³ Mu'ayyadī argues that there is no minimum number. Some have entertained that the minimum number should be the number which confirms a report as “widely-attested” (*tawātur*); but Mu'ayyadī says there is no stipulation that it should be so (*lā yushtaratu 'adad al-tawātur*); *ijmā'* is a proof based on scripture (*dalīl al-sam'*), so there is no need to turn to other types of (reason-based) proofs. Some say that if there is only one *mujtahid*, then that person's opinion, though, is a *ḥujja*; other say the opinion of a single *mujtahid* cannot be classified as consensus ('*adam ṣidq al-ijmā'*).

Section [22] discusses a well-known issue in works of *uṣūl*: if the community agrees, at one point in time, that there are two possible and acceptable answers to a particular legal problem, does this agreement imply that no one in the future can devise a third answer (or a fourth, or a fifth etc). The issue is known as the permissibility of “the introduction of a third opinion” (*iḥdāth qawl thālith*, abbreviated to *iḥdāth thālith* in Mu'ayyadī's text). Mu'ayyadī considers the third opinion permissible providing it does not entirely negate one of the positions which was agreed upon earlier. For example, there are five well-known reasons for the annulment of a marriage after it has been contracted: the so-called “five defects” (*al-'ayūb al-khamsa*). According to one opinion, if a wife discovers that her new husband is insane, or has leprosy, or has elephantiasis, or is impotent, or has been castrated, then the marriage can be annulled. According to another opinion, none of these has the power to annul a marriage. Later, a third opinion emerged, which was that there is a distinction to be made here (*al-farq*): some of these can annul a marriage and others cannot. This third opinion does not go against (or “nullify”, *raf'*) anything that the earlier two opinions agreed upon: it is a wholly distinct new opinion. If, for example, the earlier generation had stipulated that these two opinions were acceptable and that one could not pick and choose between the defects (an “all or nothing” approach), then the third opinion would be a “breaking” of the earlier consensus. So, Mu'ayyadī's position is that a third opinion can emerge providing there is nothing in it which contradicts something upon which there has already been

[22.1]

قالوا: فصل ولم يفصل أحدهم فقد خرق.
قلنا: عدم القول به ليس قولاً بنفيه، فلذلك غلط أبو جعفر، وإلا لم يجوز الخوض في متجدده.

[22.2]

قالوا: ويستلزم تخطئة كل الأمة.
قلنا: لم يخطوا فيما اتفقوا عليه.

[22.3]

المجيز: الاختلاف دليل على أنّ المسئلة اجتهادية.
قلنا: الممنوع ما اتفقوا عليه على أمر يرفعه الثالث ولم يختلفوا فيه، ووقوعه من التابعين في مسألة الأم مع زوج وأنه من قبيل الفسخ بالعيوب الخمسة.

[23]

فصل

وإحداث دليل وتعليل وتأويل ثالث جائز لعدم المخالفة، ولأنّ العلماء³⁷ لا ينكرون مستخرج علل وأدلة وتأويل.
وتكرر وشاع وذاع ولم ينكر فكان إجماعاً.

³⁷ We have attempted to rectify the incorrect grammatical structure of the sentence. The MS

reads:

.ولأنّ العلماء لا ينفك مستخرج عللا وأدلة وتأويل.

agreed upon. The objectors reply that in this example the third opinion is distinguishing between the various defects, whilst the earlier opinions did not distinguish between them and treated them as a single block; so there is a breaking of an earlier consensus here (*faṣṣala, wa-lam yufaṣṣil aḥaduhum fa-qad kharaqa*). The answer (section [22.1] – *qulnā*) is that the earlier generation did not explicitly state that one should not distinguish between the defects, and the lack of an explicit statement concerning distinguishing between the defects does not mean that they wished to affirm that they should, in fact, be considered a single block. If we were to assume that silence means affirmation in such circumstances, all debate within the law would be severely curtailed (“it would not be permitted to delve into any new [answer to an existing issue]”, *lam yajuz al-khawḍ fi mutajaddidihi*). The second objection is that permitting a third opinion to emerge is, effectively, saying that the community, when it agreed on the two positions previously was in error (*takhtī'at al-umma*) (section [22.2]). Mu'ayyadi's response is that they were not in error when they agreed on something, but they did not agree, in the example just cited, that the defects had to be treated as single block. Next there is the view from those who permit the emergence of a third opinion, but are not concerned about the new opinion contradicting something agreed upon by the earlier generation [22.3]. The fact that they disagreed is, in this opinion, an indicator that the issue is one open to *ijtihād* (individual juristic interpretation – *al-ikhtilāf dalil 'alā anna l-mas'ala ijihādiyya*). Mu'ayyadi's response is that the question is not necessarily one of pure *ijtihād* – there might be elements they agreed upon, and elements they did not agree upon. Finally, Mu'ayyadi mentions another case where a valid third opinion did emerge. The issue of the mother's inheritance, when her deceased child has a living spouse. The Companions agreed on two possible positions: either the inheritance is one third of the original sum, or it is one third of what remains after the spouse's portion has been subtracted. A third opinion emerged in which the third is taken from the original sum in the case of a woman dying with a husband; and the third was taken from the remainder in the case of a man dying with a wife. In the literature this opinion is attributed to the successor Ibn Sīrīn (i.e. one of the *tābi'īn*, d. 110/728), and the example is sometimes used to support the view of those who permit unfettered *ijtihād* for future opinions.⁶⁴ Mu'ayyadi though simply views this instance as of the same type with the “five defects” example (*wa-annahu min qābil al-faskh bi-l-'uyūb al-khamsa*): a third opinion can emerge providing it does not nullify any element of the question upon which the previous generation had explicitly agreed.

In addition to the debate around whether a third opinion can emerge (which Mu'ayyadi argues it can under certain restrictions), there is also a debate about whether a third piece of legal reasoning can emerge for a position established by consensus [23]. For example, if the *ijmā'* constituency agrees on a position, and supports that position with two authoritative indicators (or items of evidence), can a subsequent generation bring forth a new piece of evidence for the position? or is the community not only locked into the position, but also locked into the legal reasoning which establishes that position? Mu'ayyadi argues that they are not restricted in this way – the item could be a new indicator (*dalil*), or a new piece of analogical reasoning (*ta'lil*) or a new interpretation of a scriptural text (*ta'wīl*). The scholars are continuously involved in deducing new analogies, indications and interpretations. They do this repetitively and their ideas are distributed around the community, and when no one disagrees, then one has a consensus (*wa-lam yunkar fa-kāna ijma'an*). The objection to this consists of a reference to the Qur'anic verse, where the audience is warned not to follow “a way other than that of the believers” (*wa-yattbi' ghayr sabīl al-mu'minīn*).⁶⁵ We have already seen this verse used in the justification of *ijmā'*, and it is

[23.1]

وما قيل من أنّه اتّباع لغير سبيل المؤمنين ممنوع إذ المراد في المتفق عليه، وإلا امتنع فيما يجدد.

[23.2]

فإن قيل: للمؤمنين سبيل هو استدلالهم وتأويلهم السابق.
قلنا: لا نسلم أنّ لهم سبيلا فيما أحدث.

[24]

فصل

وفي جواز عدم علم الأمة بخبر أو دليل راجح مع العمل بمقتضاه أو استدلالهم بموافقة المرجوح خلاف.

[24.1]

المجوز: ليس بإجماع فإنّ عدم القول غير القول بالعدم، كما لو لم يحكموا في واقعة.

[24.2]

النافي: الراجح سبيل المؤمنين، وقد عمل بخلافه.

[24.3]

قلنا: إنما يكون الراجح سبيلا إذا سلّكه، سلّمنا فهو مؤلّ بما اتفقوا فيه.

[25]

فصل

واستبداد الأمة والعترّة وفسقهما ممتنع بحتا،³⁸ وهو ما سبق.

[25.1]

قالوا: مخرجا بهما عن الأمة والعترّة.

قلنا: يصدق أنّ أمة محمد صلى الله عليه وآله وسلم وعترته ارتدّت أو فسقت [وهو أعظم الخطأ]³⁹، أما الجهل بما لم تكلفوا به فلا، لعدم الخطأ.

[25.2]

قيل: يصير الجهل سبيلها.

قلنا: العدم ليس سبيلا.

38 Another possible reading could be محضاً.

39 The text in the square brackets is in the margin of the MS.

clear it becomes a pivotal focus in a number of *ijmā'*-related arguments. So the argument goes [23.1], the way of the believers consisted of the ruling and the reasoning for that ruling; coming up with a new piece of legal reasoning is to depart from the way of the believers, as established when the *ijmā'* came about. This argumentation is rejected; *ijmā'* concerns the ruling, and the legal reasoning for that ruling is not included unless explicitly mentioned as such. If future generations were restricted in this way, then there would be a bar on investigating all new evidence (*wa-illā imtana'a fīmā yujaddad*). Anyone who argues that the "way" (*sabīl*) of the believers in the past generations was their legal reasoning (*istidlālūhum*) is rebuffed by the argument that their "way" cannot be extended to matters which come to light after the *ijmā'*.

[24] It is possible that the community did not know about a report, or a proof of a greater strength (*rājiḥ*) than the one that they had been using; their behaviour was in accordance with this unknown evidence, but their reasoning was on a weaker indicator (*marjūḥ*). Mu'ayyadī does accept that there is some dispute (*khilāf*) here. There are those (sing. *al-mujawwiz*) who say that it is possible for the community to be unaware of an indicator which is stronger than the one they are using – arguing that just because they do not mention the indicator does not mean they had necessarily rejected it [24.1]. On the other hand, those (sing. *al-nāfi*) [24.2] who dispute that the "way of the believers" is always the strongest and most preferred indicator (*rājiḥ*); by adopting a new argument or indicator, the later generation is departing from that "way". Mu'ayyadī's position [24.3] is that it is permitted to discover a new indicator for an agreed position; it is only when the past generation has definitively followed a legal argument can we say that it forms part of their "way". When this is the case, this is a necessary interpretive offshoot of what they have already agreed upon. Here Mu'ayyadī's view mirrors his position in the "third opinion" (*qawl thālith*) argument: it is permitted for this third position (or piece of evidence) to emerge later and it does not break the previous *ijmā'*, provided the previous generation did not laydown and agree upon any exclusionary clauses or elements to their *ijmā'*.

In section [25], Mu'ayyadī returns to the wider issue of whether the community as a whole, or the Prophet's family (*al-ʿitra*) as a whole can act tyrannously or in contravention of the law (*istibdād al-umma wa-l-ʿitra wa-fisquhum*). His view is that it is impossible for this to be the case, and he refers the reader back to his earlier discussion. An opponent makes the argument that they have behaved in this way in the past [25.1]. Mu'ayyadī responds that it is possible that they have acted in this way, but it might have been through ignorance, and those who make mistakes out of ignorance are not excluded from either the community or the Prophet's family. The opponent responds [25.2] that, in that case, ignorance become the recommended course of action of the Prophet's family or the community as a whole (*yaṣīr al-jahl sabīlahā*) – and that cannot be correct. Al-Muayyadī's response [25.3] is that when they do not know something, this does not constitute a "way" which they are recommending for general adoption (*al-ʿadam laysa sabīlahum*). Furthermore, it is possible for the *ijmā'* community (the *umma* or the *ʿitra*) to split into two groups [25.3], and each group be sometimes correct and sometimes incorrect. The argument is not that the *ijmā'* constituency will always agree, but rather that when it does agree, an inerrancy (*ʿiṣma*) comes about.

[25.3]

فأما انقسامهم فريقين، كل مخطئ [ئ] في مسألة، ومصيب في أخرى، فالصحيح جوازه إذ لم يفصل الدليل إلا بالعصمة فيما أجمعوا عليه.

[26]

فصل

وإذا عارض الإجماع نص، وهما ظنيان أولاً وخصص القابل للتأويل أو التخصيص جمعا بين الدليلين وإلا فالوقف أو الاطراح أو التخيير، وإن كانا قطعيين فالختار اعتبار الإجماع لأنهم لا يجمعون إلا وقد علموا نسخه، وإن كان أحدهما قطعياً والآخر ظنياً [فقدّم القطعي] فلا تعارض.

[27]

خاتمة

جاحد المعلوم من الدين ضرورة: كافر.

[أما جاحد] المقتوع:

قيل: كافر لالتحاقه بالأول.

وقيل: فاسق لنقصه عنه فينقص الحكم، ولا يكفر.

ولا يفسق جاحد الخفي ولو منصوباً خلفاه.

ولا جاحد المجمع عليه من غير الدين كوجود بغداد.

What should one do if the issue on which there is consensus contradicts a text? In section [26], Mu'ayyadī tackles this by classifying the contradictions on the basis of the epistemological status of the consensus and the text. If both are considered less than certain (*ẓannīyān*), and one of them is seen as an interpretation or a particularisation of the other (*al-qābil lil-ta'wīl aw al-takhṣīs*), then they should be combined (*jam'*). However, if this is not possible, then one should suspend judgment (*waqf*) or reject (*al-iṭṭirāḥ*) or chose between them (*al-takhyīr*). He does not indicate here how one might select the correct course of action; usually in works of *uṣūl* that is covered in a special section on “contradiction between indicators” (*ta'āruḍ al-adilla*). If, on the other hand, both texts are considered epistemologically indubitable (*qaṭ'īyayn*), then the preferred option is to choose the norm recommended by *ijmā'*. The reason being, quite straightforwardly, that the *ijmā'* constituency must have had information which is not available to us that the norm in the textual source has been abrogated. If one is certain and the other less than certain, then of course, the certain indicator takes priority, and there is no contradiction here.

In the conclusion (*khātima* – section [27]), Mu'ayyadī discusses the status of one who refuses to accept the *ijmā'*. If an individual obstinately refuses to accept (*jāhīd*) an element of religion that is known “by necessity” (*ḍarūratan*), then he is an unbeliever (*kāfir*). If he rejects something which is certain (but demonstrated by reason, *al-maqtū'*), then there are some who say he is also a *kāfir*, but other who say he is just a disobedient miscreant (*fāsiq*). The reason for the second opinion is that refusing to accept something which is established through rational demonstration (even when it securely established) is less blameworthy. Though Mu'ayyadī does not state it, this would be where the one who rejects *ijmā'* would most likely fall – that is, he or she rejects something which is not obviously, immediately and necessarily true (*ḍarūratan*, like the oneness of God), but *ijmā'* is established with certainty to be true (*maqtū'*), even though it requires demonstration. If someone refuses to accept something which is difficult to comprehend, or is obscure or hidden, then he or she cannot even be considered a miscreant. Finally, if the person obstinately refuses to accept something which is not connected to religion but is widely agreed (*al-mujma' 'alayhi*) to be the case (such as the existence of a city like Baghdad), then he is also not considered a disobedient miscreant. With this, Mu'ayyadī closes his argumentation around the validity of consensus.

Endnotes

- 1 The *Ṭabaqāt al-Zaydiyya al-Kubrā* (of Ibrāhīm b. al-Qāsim b. al-Imām al-Mu'ayyad bi'llāh al-Shahārī, d. 1153/1740) records his birth year as either 1010/1601 or 1011/1603. See al-Shahārī, *Ṭabaqāt* (Amman, 1421/2001), v. 1, pp. 515–518; two well-known contemporary reference manuals by al-Zirikli and al-Kaḥḥāla record 1015/1606 and 1019/1610 respectively. See al-Zirikli, *A'lām* (Beirut, 1423/2002), v. 3, p. 207; al-Kaḥḥāla, *Mu'jam al-mu'allifīn* (Beirut, 1376/1957), v. 5, p. 21. The sources also differ over his death date. The earliest source is perhaps the Zaydi biographical work which is arranged in chronological order of death, and Mu'ayyadī's entry comes in the month of Dhū l-Ḥijja 1044/May–June 1635, and al-Shahārī mentions this date, but also 1048/1638 from other sources. The latter is confirmed by al-Kaḥḥāla, but al-Zirikli records 1070/1660 and 1048/1638.
- 2 Ṣalāḥ b. Ahmad al-Mu'ayyadī is recorded in the apparently anonymous pro-imamate history studied by Tritton and translated as *The Rise of the Imam of Sanaa* (published in Madras in 1925). The work was originally a PhD thesis at the University of Edinburgh (submitted 1917). In that work Mu'ayyadī is recorded as being first resistant to Imam Qāsim's advances whilst governor of Zahir province (Tritton, *The Rise of the Imam of Sanaa*, p. 83); later, as part of the Imam's military force against the Ottomans, Mu'ayyadī's attack on Abū 'Arish is recorded, “Sunday 15th IV [15th Rabī' II 1036/3rd January 1627],

Ṣalāḥ ibn Ahmed el Mu'ayyadi entered Abu Arish and the commandant hid himself in the castle. At the same time [the town of] Ṣabya submitted to the Imam and its chiefs and citizens joined his troops at Abu Arish. A week later they attacked the castle. Close under the walls they were safe from bullets while their marksmen kept the ramparts clear of defenders. The wall was soon breached and the Turks asked for terms which were granted, for Ṣalāḥ feared lest the stored should be plundered. The garrison acknowledged the Imam and the booty was rich..." (Tritton, *The Rise of the Imam of Sanaa*, pp. 145–146).

- 3 There is no indication why he left, it might possibly be due to shortages in personnel or supplies.
- 4 We could not determine the location of this place.
- 5 Al-Ḍamadī, *al-'Aqīq al-Yamānī*, fols. 475–476.
- 6 This is most likely a commentary on the famous grammatical work *Sharḥ al-shawāhid al-kubrā* by Badr al-Dīn al-'Aynī (d. 855/1451, which in turn comments on the *Alfiyya* of Ibn Mālik, d. 672/1274).
- 7 This is most likely the *Hidāyat al-afkār ilā ma'ānī l-azhār* of Ṣarīm al-Dīn Ibrāhīm al-Waḥīr (d. 914/1508); itself a commentary on the famous Zaydī *fiqh* work *Kitāb al-azhār* of Aḥmad b. Yahyā al-Murtaḍā, d. 840/1432.
- 8 <https://elibrary.mara.gov.om/en/imam-zaid-library/cultural-foundation-library/book/?id=14467> (accessed 25 January 2021)
- 9 It is not clear whether *ahl al-uṣūl* here refers to legal theorists (i.e. *uṣūl al-fiqh*), or theologians (i.e. *uṣūl al-dīn*), or some other group. In favour of "legal theorists" is the fact that they can be contrasted with *ahl al-furū'* in section [1.6] and that all the contrasts (*mujtahids* and X) are with primarily legal groupings. In favour of theologians is that *mutakallimūn* form a distinct group, and experts in legal theory would normally be considered *mujtahids* in any case.
- 10 'Aḍud al-Dīn al-ʿĪjī, *Sharḥ al-'Aḍud* (Beirut, 1421/2000), p. 109.
- 11 Qur'an 17:23.
- 12 It might seem strange he does this, since Mu'ayyadi has [in 1.2] already refused to accept the notion that the *ijmā'* constituency should consist of the *mujtahids* alone. The explanation for this is most likely that Mu'ayyadi is following closely the discussion in other *uṣūl* texts: in particular the texts of the *Mukhtaṣar* of Ibn al-Ḥājjib and the *Minhāj* of al-Bayḍāwī, and the various commentaries on those texts. In these texts, this objection can be found in the *Sharḥ al-'Aḍud*, p. 109 and Ibn al-Ḥājjib, *Mukhtaṣar al-muntahā al-uṣūlī* (Cairo, 1326/1908), p. 56.
- 13 The electronic copy of the manuscript available to us is unclear here. The reading *al-salaf wa-l-khalaf* is one possibility, and seems to fit. The faded script could also read "*al-salaf wa-l-burhān*", which would mean that there is an *ijmā'* from the early generations on this matter, and it is also demonstrated and backed up by logical proof.
- 14 Though, it should be noted, as it is in the commentary tradition, that the examples are from the early generations (*ṣaḥāba*, *al-salaf* etc.), and do not prove the on-going effectiveness of *ijmā'* beyond those early generations.
- 15 Interestingly, in the parallel passages in the *Mukhtaṣar al-muntahā* and in the *Minhāj al-wuṣūl* the term used is *al-Shi'a*; here it is replaced by *al-Imāmiyya* (the *Mukhtaṣar* also reads "some of the *Khawārīj*" rather than all of them as a group). Clearly, Mu'ayyadi has edited the citation from these Sunni sources so the Zaydis are not counted as amongst the denier of *ijmā'*. See Ibn al-Ḥājjib, *Mukhtaṣar al-muntahā*, p. 56; al-Bayḍāwī, *Minhāj al-wuṣūl* (Beirut, 1429/2008), p. 174.
- 16 Al-Haythamī, *Majma' al-zawā'id* (Beirut, 1408/1988), v. 7, p. 221.
- 17 The report containing the word "mistake (*khaṭa*)" does not appear in the primary hadith sources.
- 18 Muslim al-Naysābūrī, *Ṣaḥīḥ Muslim* (Beirut, 1424/2003), p. 970.
- 19 Al-Tirmidhī, *Sunan al-Tirmidhī* (Beirut, 1403/1983), v. 3, pp. 315–316.
- 20 Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut, 1401/1981), v. 8, p. 87.
- 21 Qur'an 4:115.
- 22 Qur'an 2:143.

- 23 In the *Minhāj al-wuṣūl* (p. 176), al-Bayḍāwī uses this disjuncture between God's declaration of the community being virtuous and the individual's actions giving him moral probity for witnessing to discredit the verses as a theological issue around the creation of actions. Defending this verse's use as a support for *ijmā'*, al-Bayḍāwī states that according to his theology, all the servant's actions (which gave him moral probity) are actually the actions of God, so there is no contradiction in the verse. For Mu'ayyadi, who presumably (like the Zaydis of his time) believes the actions of an individual are created by the individual, the disjuncture creates an ambiguity which makes the verse problematic as a source. In al-Bayḍāwī's passage – in *qīl-qulnā* format – the interlocutor is arguing against the verse being a proof of *ijmā'* (*qīl*), and al-Bayḍāwī refutes the objection (*qulnā*). Mu'ayyadi, on the other hand, seems persuaded by the interlocutor's arguments, and hence these form the basis of his view that the verse is problematic.
- 24 Qur'an 16:89.
- 25 Qur'an 4:59.
- 26 Qur'an 33:33.
- 27 Qur'an 42:23.
- 28 For different variants of this report see al-Tirmidhī, *Sunan al-Tirmidhī*, v. 5, p. 329; Muslim al-Naysābūrī, *Ṣaḥīḥ Muslim*, p. 1200; al-Nasā'ī, *Khaṣā'is Amīr al-mu'minīn 'Alī b. Abī Ṭālib* (Qum, 1419/1998), p. 112; al-Ḥākim al-Naysābūrī, *al-Mustadrak 'alā l-ṣaḥīḥayn* (Beirut, 1406/1986), v. 3, p. 109.
- 29 Al-Ḥākim al-Naysābūrī, *al-Mustadrak*, v. 2, p. 343; v. 3, p. 351; al-Haythamī, *Majma' al-zawā'id*, v. 9, p. 168.
- 30 Al-Haythamī, *Majma' al-zawā'id*, v. 9, p. 168 (with slightly different words). For Ḥiṭṭa see Madelung and Walker (eds. and trs.), *Reaffirming the Imamate* (London, 2021), p. 37, footnote n. 44.
- 31 Al-Haythamī, *Majma' al-zawā'id*, v. 9, p. 174 (with slightly different words).
- 32 Al-Sharīf al-Raḍī, *Nahj al-balāgha* (Qum, 1414/1993), pp. 119–120.
- 33 The simple phrase *da'wā bātila* could mean the claim is weak because there is no evidence for the companion-based *ijmā'*, or that companion-based *ijmā'* is not a proof. We argue for the first, because earlier Mu'ayyadi seems to have accepted the power of companion-based *ijmā'* to disprove opponents claims (see [2.3]).
- 34 Mālik b. Anas, *al-Muwatta'* (Beirut, 1406/1985), v. 2, p. 886; al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, v. 9, pp. 79, 143.
- 35 Alternatively, Mu'ayyadi might be read as saying the report is weak because it contradicts reality (i.e. when a report contains a manifest untruth, it must be weak irrespective of its transmission chain). The “argument” reading, because Mu'ayyadi goes on to say the report is “isolated” (*aḥādī*), and isolated reports can be sound in *isnād*, just limited in terms of transmission chains.
- 36 Aḥmad b. Ḥanbal, *Musnad Aḥmad* (Beirut, 1318/1900), v. 4, pp. 126–127; Ibn Māja al-Qazwīnī, *Sunan Ibn Māja* (Beirut, n.d), v. 1, pp. 15–16.
- 37 Aḥmad b. Ḥanbal, *Musnad Aḥmad*, v. 5, p. 382.
- 38 'Abd b. Ḥumayd, *al-Muntakhab min musnad 'Abd b. Ḥumayd* (Riyadh, 1423/2002), v. 2, p. 30.
- 39 This report is generally categorised as a weak report. See al-'Ajalūnī, *Kashf al-khafā' wa-muzil al-iltibās* (Beirut, 1408/1988), v. 1, p. 374.
- 40 Al-Āmidī, *al-Iḥkām* (Beirut, 1402/1982), v. 2, pp. 95–103.
- 41 See n. 38.
- 42 Al-Haythamī, *Majma' al-zawā'id*, v. 7, p. 235.
- 43 Al-Tirmidhī, *Sunan al-Tirmidhī*, v. 5, p. 297.
- 44 Al-Haythamī, *Majma' al-zawā'id*, v. 9, p. 114.
- 45 Aḥmad b. Ḥanbal, *Musnad Aḥmad*, v. 1, p. 179; v. 3, p. 32.
- 46 'Aḍud al-Dīn al-Ījī, *Sharḥ al-'Aḍud*, p. 114.
- 47 Al-Bayhaqī, *al-Sunan al-kubrā* (Beirut, n.d), v. 10, p. 348.
- 48 Al-Bayḍāwī, *Minhāj al-wuṣūl*, p. 187.

- 49 Qur'an 48:18.
- 50 Abū Dāwūd al-Sijistānī, *Sunan Abī Dāwūd* (Beirut, 1410/1990), v. 2, p. 404.
- 51 For one such example see Mālik b. Anas, *al-Muwatta'*, v. 2, p. 589.
- 52 Aḥmad b. Ḥanbal, *Musnad Aḥmad*, v. 4, p. 278.
- 53 Al-Bayḍāwī, *Minhāj al-wuṣūl*, p. 185.
- 54 Al-Bayḍāwī, *Minhāj al-wuṣūl*, p. 186.
- 55 Muslim al-Naysābūrī, *Ṣaḥīḥ Muslim*, v. 7, p. 95.
- 56 See al-Bayhaqī, *al-Sunan al-kubrā*, v. 10, p. 348.
- 57 See al-Baghawī, *Sharḥ al-sunna* (Beirut, 1403/1983), v. 9, pp. 99–100.
- 58 Al-Shāfi'ī, *Kitāb al-umm* (Beirut, 1403/1983), v. 6, p. 113.
- 59 See Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl* (Beirut, 1412/1991), v. 4, p. 210.
- 60 Qur'an 4:115.
- 61 See Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl*, v. 4, p. 211.
- 62 For *bay'* *al-murādā* see al-Nawawī, *al-Majmū'* (Cairo, 1344/1925), v. 11, p. 345.
- 63 Al-Bayḍāwī, *Minhāj al-wuṣūl*, p. 187.
- 64 Their argument is that there was no condemnation of Ibn Sīrīn when he pronounced this new, third, opinion; and if it had been forbidden for him to develop this third opinion, someone would have condemned him for it. Al-Bābartī, *al-Rudūd wa-l-nuqūd* (Riyadh, 1426/2005), v. 1, p. 577. Mu'ayyadī seems unmoved by this argument, and sticks the no-*raf'* (no nullification) condition for future opinions.
- 65 Qur'an 4:115.

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CHAPTER 8

Why Early Muslims Divided into Sects? A Chapter from the *Mukhtaṣar al-uṣūl* of ‘Alī b. Muḥammad b. al-Walīd (d. 612/1215)¹

Kumail Rajani

Introduction

‘Alī b. Muḥammad b. Ja‘far b. Ibrāhīm b. Abī Salama b. al-Walīd al-Anf al-‘Abshamī al-Qurashī (d. 612/1215, hereon ‘Alī b. Muḥammad) is the fifth *dā‘ī muṭlaq* (literally “the absolute missionary”) of the Musta‘li-Ṭayyibī Isma‘ilis.² Born and raised in Yemen, he assumed the leadership of the Musta‘li-Ṭayyibī *da‘wa* (proselytising mission) at the advanced age of eighty-three; he was leader for 7 years from 605/1209 to 612/1215. In order to understand the role and status of the *dā‘ī muṭlaq*, a brief historical background of this hierarchical rank within the *da‘wa* is necessary. The Isma‘ili *da‘wa* divided into Nizārī and Musta‘li factions following the death of the Fatimid Caliph-Imam Mustanṣir bi’llāh in 487/1094.³ His oldest son Nizār (d. 488/1095) was favoured for the seat of imamate by the Persian and Syrian Isma‘ili communities. The Isma‘ilis of Egypt and Yemen, on the other hand, supported the leadership of Nizār’s younger half-brother Musta‘li (d. 495/1101). The Isma‘ili *da‘wa* herefore split between two Imams. In the Musta‘li branch, Musta‘li was succeeded by his son Āmir. A further split occurred among them on the issue of Āmir’s succession. Who was the designated successor of Āmir? The Egyptian Musta‘li *da‘wa* proclaimed the imamate of Ḥāfiẓ ‘Abd al-Majīd (d. 544/1149), Āmir’s cousin, justifying this by the claim that the latter did not leave any heir. The equally powerful Yemenī Musta‘li *da‘wa* asserted that Āmir left a son, named Ṭayyib, who was born just before his assassination and, therefore, advocated the imamate of the infant Ṭayyib.⁴ Ṭayyib was then believed to have gone in concealment (*satr*). It was at this point that a distinctive Isma‘ili Musta‘li-Ṭayyibī community emerged. The followers of the Musta‘li-Ṭayyibī tradition hold that the imamate enters a period of concealment (*dawr al-satr*) during which the chain of imamate continues in the progeny of Ṭayyib, though the identity of the Imam at any point in time is unknown. In the absence of the Imams, the leadership of the community is delegated to the *dā‘ī muṭlaq*.⁵ The author of the text presented below is the fifth such *dā‘ī* in the chain of Isma‘ili Musta‘li-Ṭayyibī *dā‘īs*.⁶

‘Alī b. Muḥammad hailed from the distinguished al-Walīd family of al-Quraysh. He was a notable scholar who played a critical role in both the administrative supervision and intellectual direction of the Musta‘li-Ṭayyibī Isma‘ilis. He served as the *ma’dhūn* (deputy) for the third *dā‘ī muṭlaq* Ḥātim b. Ibrāhīm b. al-Ḥusayn al-Ḥāmīdī (d. 596/1199). Ḥātim al-Ḥāmīdī has offered him highest accolade. He writes:

As with the nobility of lineage, ‘Alī b. Muḥammad hails from the noblest of the lineages of his time; he boasts the most impressive pedigree; he is the highest ranked member of the guiding *da‘wa* (*al-da‘wa al-hādiya*); he precedes others in virtuous and praiseworthy deeds. His great-grandfather Ibrāhīm b. Abī Salama – may God bless his soul – was dispatched as a delegate to the court of al-Mustanṣir by ‘Alī

b. Muḥammad [al-Ṣulayhī] (d. 459/1067, the founder of the Yemeni Ṣulayhid dynasty) – may God send his blessing on both of them – ... They [the al-Walīd family] trace their origins to Banū ‘Abd Manāf b. Quṣayy, one of the noblest families of al-Quraysh and stellar tribes of the Arabs. None of his contemporaries could match him in purity, piety, worship, chastity, devotion, loyalty (*walāya* - loyalty to the Imams) and exemplary conduct. All those necessary qualifications enumerated by the *dā‘ī* [Aḥmad al-Nisābūrī, d. after 386/996] – may God elevate his status – in this epistle [*al-Risāla al-mūjaza al-kāfiya fī adab al-du‘āt*] are found in him. It is for this reason, I entrusted him with the affairs of the guiding *da‘wa* (*al-da‘wa al-hādiya*) in Yemen – may God’s blessings be upon its master –.⁷

‘Alī b. Muḥammad was also the tutor of the soon-to-be fourth *dā‘ī* ‘Alī b. Ḥātim whom he succeeded as the fifth *dā‘ī*. In fact, it was ‘Alī b. Muḥammad who recommended Ḥātim b. Ibrāhīm to appoint his son as the next *dā‘ī*.⁸ He also wrote a treatise (*Risālat al-bayān wa-mudhīdat al-buhtān*) in refutation of Muḥammad b. Aḥmad al-Aḥwarī who claimed the *dā‘ī*ship after *dā‘ī* Ḥātim. This demonstrates his influence in the most sensitive and personal decisions of the *dā‘ī* and the *da‘wa* administration. On the political front, he maintained strong relationships with Ayyūbids, Ṣulayhids and Hamdānids during his tenure. He died in Ṣan‘ā’ at an advanced age of ninety years. The leadership of the *da‘wa* continued in his family for almost three and a half centuries (until 946/1539), with two brief interruptions, before it moved to India in the 10th/16th century.

‘Alī b. Muḥammad composed several works. Hamdani and Poonawala offer a list of sixteen titles.⁹ Most of these works relate to Isma‘īli theology, cosmology and eschatology. His works also include eulogies of early *dā‘īs* and refutations of their adversaries, particularly those who supported the imamate of Ḥāfiz.¹⁰ There is a noticeable absence of writings on Isma‘īli law and legal theory among these titles. ‘Alī b. Muḥammad is not an isolated example of having shown little interest in writings on *fiqh*; early *dā‘īs* too did not appear to have composed independent works on law. However, ‘Alī b. Muḥammad has analysed legal positions of other schools in his works of refutations, and it is by reading these works we are able to glean his expositions on Musta‘lī-Ṭayyibī law and legal theory. One such work is his *Mukhtaṣar al-uṣūl*, the first chapter of which is edited and commented upon in this section. The study of the *Mukhtaṣar al-uṣūl* is, therefore, an attempt to discover those nuances which underpin the Musta‘lī-Ṭayyibī legal framework.¹¹

In the introduction of the *Mukhtaṣar al-uṣūl*, ‘Alī b. Muḥammad justifies the reason behind his selection of the title *Mukhtaṣar al-uṣūl* – a concise book on *uṣūl*. It is a succinct treatise, he writes, that is set to expound on the tenets of Isma‘īli tradition by refuting the opinions espoused by other legal and doctrinal schools. The word *uṣūl* in the title, it should be noted, does not appear to refer to the discipline of legal theory (*uṣūl al-fiqh*) rather alludes to the key doctrines on which the foundation of Isma‘īli tradition is laid. In explicating these *uṣūl*, he examines the theories of legal interpretation, legal hermeneutics and legal authority – topics that are conventionally studied in the works of *uṣūl al-fiqh*.

Unlike other Islamic legal schools of the third-fifth/ninth-eleventh centuries, Isma‘īlis did not produce any independent manuals of *uṣūl al-fiqh*. This is important since, as Stewart argues, for any legal school to become authoritative it had become a necessity either to outline its distinctive legal theory or to conform or respond to the existing legal hermeneutics.¹² Was Isma‘īli legal tradition lagging behind other Sunni and Shi‘i legal schools? Did the direct access to Imams until 526/1132 (the year in which Ṭayyib was alleged to have gone in concealment) rendered legal interpretation redundant because the presence of a living Imam suspends the need of taking re-

course to a jurist's opinions? In the Isma'ili doctrinal and legal framework, religious authority is bestowed upon the Imam. In the absence of an Imam, the *dā'i* occupies the same position with the exact same role and function. Religious guidance is, then, the exclusive prerogative of the Imam or the *dā'i* and the followers are expected to submit to their authority. Simply put, their words and actions are 'sources' of law in themselves and not mere interpretations of 'sources'. The very presence of a central authoritative figure such as an imam (or a *dā'i* in his absence) leave no room for personal juristic reasoning, let alone a school, to emerge.¹³

Though the field of Islamic law (*fiqh*) in general, and in particular, the discipline of legal theory (*uṣūl al-fiqh*) did not fully develop in the Isma'ili tradition, its legal framework can be gleaned through works of refutations that critique Sunni theories of legal interpretations. *Ikhtilāf uṣūl al-madhāhib* of al-Qāḍī al-Nu'mān (d. 363/974), for instance, represents one such early work of refutation that contains discussions of Isma'ili legal hermeneutics.¹⁴ Though primarily a polemical work, it expounds on issues that are of direct interest to the field of legal theory, such as the authority of the Imams, refutation of analogical deduction (*qiyās*), refutation of consensus (*ijmā'*) etc. Our text, *Mukhtaṣar al-uṣūl*, though different in style and structure, shares the same objective of the *Ikhtilāf*.¹⁵ In the *Mukhtaṣar*, 'Alī b. Muḥammad refutes what he sees as the dubious and flawed theories of legal interpretations adopted by the Sunnis, highlighting the importance of obtaining religious guidance from a divinely appointed central authority (i.e. Imam). In doing so, he argues for the superiority of Isma'ili tradition over other Islamic legal and doctrinal schools. The divine authority of the Imams and the successorship of the *dā'is* are central to his arguments. One might expect the book to contain a detailed discussion of the nature of the concealment (*saṭr*) of Imam al-Ṭayyib and the doctrinal challenges it might have brought for the early Musta'li-Ṭayyibī community, but no effort is made to explain or justify this central doctrine. The lucid structure of the composition and succinct nature of its arguments might suggest that the book was aimed at Musta'li-Ṭayyibī adherents who were expected to be already familiar with the key doctrines of the school and their relevant proofs and justifications.

The present chapter is a critical edition and commentary on the first chapter of the *Mukhtaṣar al-uṣūl*. The book is divided into four chapters (*abwāb*, sing. *bāb*), each of which is further divided into sections (*fuṣūl*, sing. *faṣl*). The first chapter, divided into four sections, analyses the reasons that led to the emergence of divergent groups within Islamic tradition. In the third section of this chapter, the author lists four groups of people explaining their positions and approaches vis-à-vis Prophetic statements. They are Ḥashwiyya, Mu'tazilites, heretics and the People of Truth and Sound Beliefs (*Ahl al-ḥaqq wa-l-ḥaqīqa*, i.e. the Isma'ilis). This chapter is presented and summarised below.

The second chapter, divided into seven sections, sets out to provide a sustained refutation of Shāfi'is, Ḥanafis and Mālikis – all grouped under the broad category of Ḥashwiyya and Jabriyya. The author introduces them as those limiting themselves to the *prima facie* meaning of the Qur'an and hadith and thus remaining oblivious to the hidden core meaning of the *sharī'a*. The third chapter, divided in eight sections, attempts to refute Mu'tazilī and Zaydī – both identified as *Aṣḥāb al-ra'y* – claims of being capable of speculative reasoning. Their excessive dependence on personal reasoning, the author asserts, have led them to follow their own personal opinions and whims and not the *sharī'a*'s incontrovertible proofs. The final chapter is divided into ten sections. It aims to provide a brief survey of the ideas propagated by disbelieving philosophers and heretics who dismiss the doctrine of prophethood and his promises of reward and punishment in the hereafter.

Chapter One of the *Mukhtaṣar al-uṣūl* reveals two important features in the study of the broader Shi‘i legal theory. First, it examines various approaches adopted by non-Shi‘i legal schools in interpreting the textual sources of the law (*fiqh*). Second, it elaborates on the role of Imams in interpreting the law. Both the topics squarely fit within the broader interest of legal hermeneutics and legal theory.

This book has survived in several manuscripts. I have been able to procure five manuscripts of Indian provenance for the edition below. I have attempted to select the best text in the edition after comparing all the five MSs, but also indicating the variants in the footnotes.¹⁶ What follows is the description of the MSs on which my edition is based. The sigla used in the footnotes are references to the names of the religious institutions/places where the MSs are currently held.

1. Alavi Bohra (A):

The transcription of this copy was completed on Monday 20 al-Jumādā l-ūlā 1311/27 November 1893 by Ibrāhīm b. Ādamjī b. Marḥūm Ismā‘īl b. Karīmḥā‘ī, the resident of Kapadvanj. A copy of this MS is housed at the Alavi Bohra *da‘wa* collection in Baroda.

2. Alavi Bohra (A2):

The title page of the MS reads: This treatise was obtained from a Dawoodi [Bohra] scholar during the time of Sayyidnā Badr al-Dīn b. Sayyidnā Fakhr al-Dīn (d. 821/1418). A significant portion of the colophon has been scrubbed and is unreadable. However, from the mention of Sayyidnā Wajīh al-Dunyā wa-l-Dīn [b.] Sayyidnā al-Shaykh ‘Abd al-Qādir b. Mullā Khān (d. 1168/1754) we can surmise that the MS was copied around mid-twelfth/eighteenth century. The colophon appears to have been intentionally scrubbed to hide the identity of the copyist, supposedly a Dawoodi Bohra scholar. A copy of this MS is housed at the Alavi Bohra *da‘wa* collection in Baroda.

3. Aljamea-tus-Saifiyah (JS):

This MS was transcribed by Fakhr al-Dīn b. Mullā Yūsuf ‘Alī Khayrgū‘ī between [Tuesday] 1 Ṣafar [1362] and Friday 24 Ṣafar 1362/2 February [1943] and 26 February 1943. The date of transcript is recorded on the first page without the mention of the year. The date and year of completion, however, are mentioned in the colophon. This copy appears to be produced for learning and teaching at the Dawoodi Bohra seminary Aljamea-tus-Saifiyah in Surat.

4. Karachi (K):

This MS was transcribed by Fidā Ḥusayn b. ‘Abd al-Qādir Bhānpūrī, a resident of Indore and lecturer at al-Madrasat al-Wajīhiyya. The colophon reveals that the transcription was completed on Thursday 27 Shawwal 1358/7 December 1939. It is currently held in the family collection of Qazi Dr. Shaikh Abbas Borhany al-Waleed.¹⁷

5. Unknown (U)

The transcript of this MS was completed on 7 Ṣafar 1263/23 January 1847 during the leadership of ‘Abd al-Qādir Abū Muḥammad Najm al-Dīn, the 47th *dā‘ī* of Dawoodi Bohras (d. 1302/1885). A copy of this MS is housed at the Alavi Bohra *da‘wa* collection in Baroda.

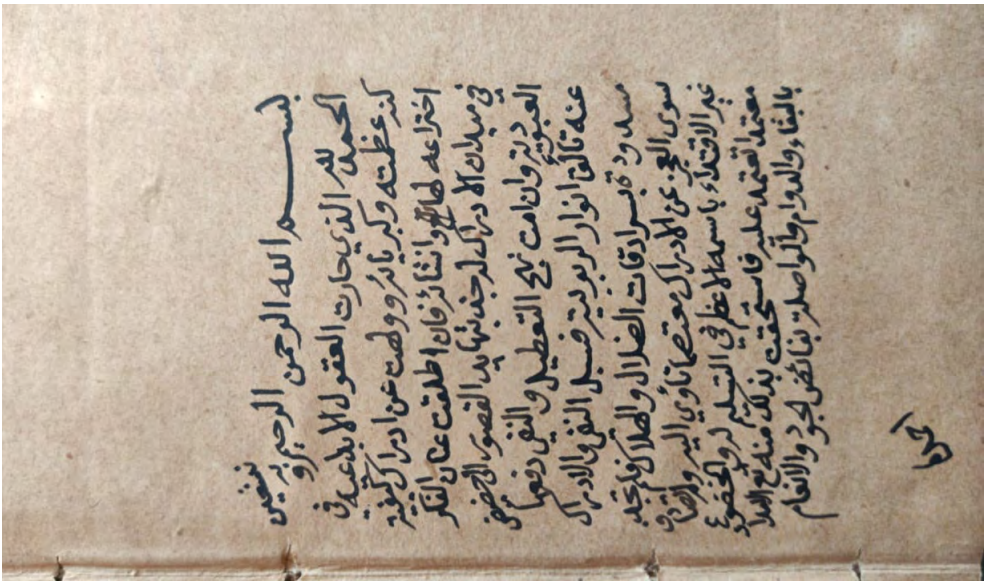


Figure 8.1 MS Alavi Bohra da'wa collection (A), Baroda, fol. 1b

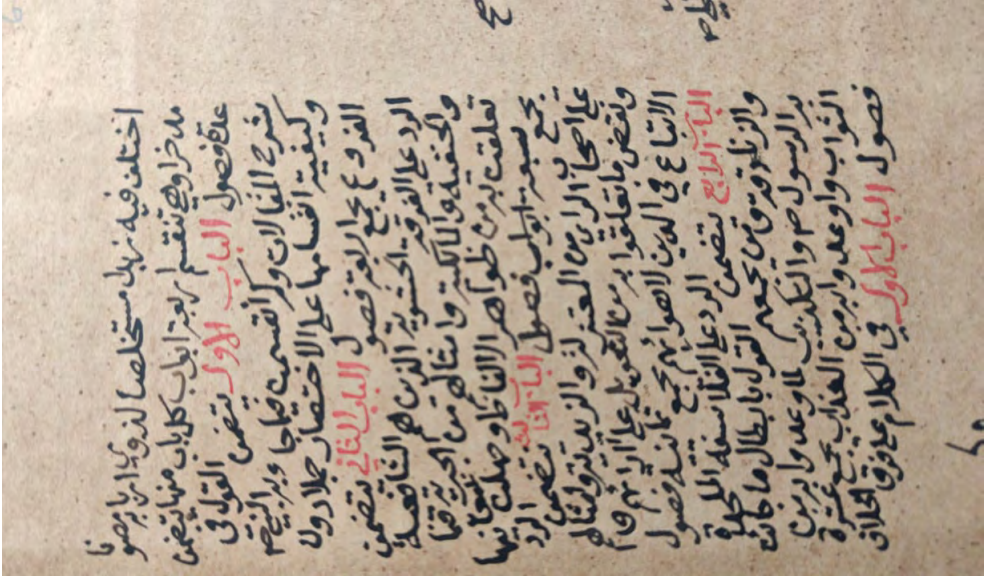


Figure 8.2 MS Alavi Bohra da'wa collection (A), Baroda, fol. 2a

البنياء والخيالات في مسائل الجواهر
 الغار وكان جهلهم سبيل إلى
 تشبهوا بغيرهم وتفرقتهم عن
 مباني اعتقادهم وفضل الامم عصر
 مع الامم باتباع الدلائل ابواب الحق
 الخفي من ظلم المشرك الى اقرار
 اليقين والتخلص من هوان التبت
 بهنهم المحققين **الفصل الثالث**
 وكان الخبيثون النبي صلى الله عليه وآله
 اله فيما بين به السامعون لم يخاله
 ينسبون على الاختلاف والوصف

Figure 8.3 MS Alavi Bohra dā'wa collection (A2), Baroda, fol. 15b

الفروع من ربيع من قد سمعت ما اتاهه قلب
 الله عليه وعلى اله من نص الكلام في
 الغيبة والشريعة فثبتت على ظاهر
 لفظه تليد وفندت من زعمائه تهم
 معاني غير ما دل عليه ظاهر الفاظ
 شذوذ بل طلت العيان والعقول وكفرت
 السبل عن بيان ذلك وما عسول
 هو لا هراحي الى حديث علي اختلاف
 من قهر وتشبه في الفروع ومن
 قهر والفرقة الشاذية انكرت عقول
 ما ورد في ظاهر خلافة الفروع

Figure 8.4 MS Alavi Bohra dā'wa collection (A2), Baroda, fol. 16a

مختصر الأصول علي بن محمد بن الوليد الأنف القرشي م 612هـ

هذا كتاب المختصر من تصنيف سيدنا علي بن محمد بن الوليد قدس الله روحه¹

بسم الله الرحمن الرحيم وبه نستعين²

الحمد لله الذي حارت العقول ... وسميتها بمختصر الأصول لكون ما تكلمت فيها عليه من الأصول مختصراً، ومحصول معاني ما اختلف فيه زبداً، مستخلصاً، لذوي أربابه³ مصوناً، مدخراً، وهي تنقسم [في] أربعة أبواب. كل باب منها يتضمن عدة فصول.

الباب الأول: يتضمن القول في شرح المقالات وكما انقسمت فيما جاء به النبي صلح وكيفية انقسامها على الاختصار جملاً دون الفروع، يجمع أربعة فصول.

الباب الثاني: يتضمن الرد على الفرقة الحشوية الذين هم الشافعية والحنفية والمالكية وأمثالهم من الجبرية فيما تعلقت به من ظواهر⁴ الألفاظ وجهلت من⁵ معانيها، يجمع سبعة فصول.

الباب الثالث: يتضمن الرد على أصحاب الرأي من المعتزلة والزيدية وأمثالهم ونقض ما تعلقوا به من التعويل على آرائهم والاتباع في الدين لأهوائهم⁶، يجمع ثمانية فصول.

الباب الرابع: يتضمن الرد على معطي الشرائع من⁷ الفلاسفة الملحدة والزنادقة ومن يجمعهم القول بإبطال ما جاءت به الرسل⁸ ص والتكذيب لما وعدوا به من الثواب وأوعدوا به من العقاب،⁹ يجمع عشرة فصول.

[1] الباب الأول في الكلام على فرق الخلاف وكيفية انقسامها، يجمع أربعة فصول:

[1.1] الفصل الأول من الباب الأول:¹⁰

[1.1.1] نقول -بعون الله تعالى ومادة وليه¹¹ في أرضه عليه السلام-:¹² أن الله تعالى¹³ لما كان لا سبيل لخلقه إلى إدراكه لعدمهم آلة الإدراك بكون الصنعة لا تدرك صانعها والخلقة لا تحيط بخالقها ومبدعها، وكان سبحانه

1 Missing in A.

2 Missing in JS.

3 JS: لأربابه

4 K: ظاهر

5 Missing in A.

6 K: الأهواء هم

7 missing الشرائع من A; missing معطي الشرائع من A2, K and U.

8 A, A2: الرسول ص

9 A: العذاب

10 A, A2, K, U: الفصل الأول منها

11 JS: ع م

12 JS: سلام الله عليه instead of عليه السلام; A2, K, U: صلوات الله عليه

13 missing في A.

Summary

[1] The First Chapter: Deviated Sects and Nature of their Schism

The central focus of this chapter is to establish the religious authority of the Imams. The author, ‘Alī b. Muḥammad b. al-Walīd, introduces Imams as the custodians of religion, inheritors of Prophet’s knowledge and rightful interpreters of the esoteric and allegorical meanings of the Qur’an. Abandoning them was, he argues, the reason that Muslims became divided into different sects – each one construing *sharī‘a* according to their whimsical interpretations. In this respect, it neatly resembles the discussion of *ḥujjiyyat qawl al-imām* (*Fath al-bāb*, passages [37–38]), *ḥujjiyyat ijmā‘ al-‘itra* (*Qaṭṭara*, passage [4]) among other topics concerning *ḥujjiyyat* (legal force) that are typically discussed in the works of *uṣūl*. The overarching style and structure of argumentation, though, as will be demonstrated below, is theological and not *uṣūlī* (legal theoretical) in nature. In other words, the author is attempting to construct a theological, rather than a jurisprudential argument. Nonetheless, we can read the *Mukhtaṣar* with a view to uncovering Isma‘īlī legal theory, for the chapter elaborates topics, such as legal authority, methods of interpreting texts and the like, that are of direct interest to *uṣūl*.

This chapter is divided into four sections [1.1–1.4].

The first section [1.1] aims to define the doctrine of prophethood and the role prophets play not only in preaching but also in interpreting the *sharī‘a*. In this section, ‘Alī b. Muḥammad addresses three issues: the need for the prophetic institution [1.1.1], the mission of the prophets [1.1.2] and the characteristics of their divine message [1.1.3]. The arguments are presented succinctly. Unlike his early Isma‘īlī predecessors, our author does not offer any philosophical reasoning.¹⁸ The rhetorical nature of the arguments suggests that this work was composed for the members of Musta‘li-Ṭayyibī community of Yemen and India.

[1.1] Section One

In reference to the need for the prophetic institution [1.1.1], ‘Alī b. Muḥammad builds his argument on three premises. First, human beings are inherently deficient in their comprehension of God. It is self-evident, the author argues, that the creator cannot be conceived by his creation. Second, the benevolent God has chosen human beings for His divine guidance. Third, unlike animals, human beings are not born with innate knowledge/behaviours that could protect them from evil. To support this premise, the author cites the Qur’anic verse: “It is God who brought you forth from your mothers’ wombs knowing nothing, and gave you hearing and sight and minds, so that you might be thankful.”¹⁹ The author attempts to draw a logical conclusion from these three premises; it is due to God’s over-encompassing mercy and all-embracing grace that he sends prophets. These messengers of God are entrusted with the responsibility of human guidance. Their role is to preach God’s message and invite humanity towards His path.

مريدا لهدايتهم لطيفا بهم في إمدادهم وإفادتهم وإن كانت العبارة عنه تعالى¹⁴ بهذه الألفاظ استعارة دعا¹⁵ إليها الحصر، وكناية التجأ¹⁶ إليها العاجز المضطر وهو جل عن الهوية، منزّه عن أن يعبر¹⁷ الألفاظ عن كنه عظيم¹⁸ أسماؤه، فكيف يتناول بها عالي جلاله وكبريائه وكان نوع البشر في ابتداء وجوده غير ملهم مصالحة، كما ألهم سائر الحيوان وغير العالم¹⁹ كما قال الله تعالى: ﴿وَاللَّهُ أَخْرَجَكُمْ مِنْ بُطُونِ أُمَّهَاتِكُمْ لَا تَعْلَمُونَ شَيْئًا﴾²⁰ - الآية-²¹ فاقترضت رحمته الواسعة، ومنته الشاملة خلقة، الجامعة بعث الرسل إليهم²² منهم ليهدوهم إليه وأقامتهم فيهم الدعاة²³ يدعونهم إليه ويدلونهم عليه.²⁴

[1.1.2] وكان الرسول المبعوث إلى الناس ملزما لهم طاعة الله تعالى،²⁵ جبرا وتخييرا، عاما لكافتهم، كما قال الله تعالى لنبيه صلح²⁶: ﴿وَمَا أَرْسَلْنَاكَ إِلَّا كَافَّةً لِلنَّاسِ بَشِيرًا وَنَذِيرًا﴾.²⁷

[1.1.3] كانت الشريعة التي يأتي بها مطابقة لقانون الخلقة الطبيعية،²⁸ وموازية للهيئة السماوية الفلكية، تجمع ظهرا وبطنا،²⁹ وتتضمن لفظا ومعنى، لتصح الدلالة على المرسل تعالى³⁰ بالوحدانية والتفرد له سبحانه³¹ من بين ما أبدع وخلق بالفردانية، وفي كونها على هذه الصيغة تعم فائدتها البشر من خاص وعام ويشتركون في الانتفاع بها، وإن تفاوتوا في الأفهام، يأخذ كل³² منها على مقدار³³ عقله، ومرتبته³⁴ في دنائه³⁵ في التخلق،³⁶ أو شرفه في السبق وفضله، حكمة يتبين فيها فضل السابق على المسبوق ويقتدي فيها باللاحق بالمحقق،³⁷ فيستحقوا على حسب سوابقهم³⁸ درجات الثواب، ويرتقوا بقدر تفاوتهم في المراقي³⁹ الإلهية والأسباب.

[1.2] الفصل الثاني من الباب الأول:

ولعل قائلا⁴⁰ يقول: فكان⁴¹ الأولى بعدل الله تعالى، ورحمته، وطوله الواسع، ورأفته، أن يعمهم بالتساوي في الفهم فيستووا في⁴² المعاد، ويجمعهم في قبول الهداية، فيخلصوا⁴³ من التخالف والتضاد. فأقول له في جواب ذلك

14 Missing in A2.

15 JS, A, K: دعى

16 A, JS, K, U: التجى

17 يعبر in A, K and U.

18 Missing in A2.

19 A2: عالم

20 Qur'an 16:78. A: ولا تعلمون شيئا

21 Missing in A and K.

22 Missing in A2.

23 A, A2, K: دعاة

24 missing in A, A2, K and U. In JS, it occurs in margin,

25 Missing in JS, A2 and K.

26 missing in A, A2 and K.

27 Qur'an 34:28.

28 الطبيعية in A and A2.

29 باطنا

30 Missing in JS.

31 Missing in JS.

32 U: كله

33 A, K: قدر مبلغ; U: مقدار مبلغ عقله

34 مرتبة: A

35 دنائه: A2

36 U: التخلف

37 A2: الملحق

38 JS: سوابقهم

39 JS: مراقي; U: مراقي

40 A, A2, K: قائل

41 K: وكان

42 Missing in A.

43 JS, K, U: فيخلصوا

In reference to the prophetic mission, ‘Alī b. Muḥammad asserts [1.1.2] that the prophets are required to demand God’s subservience from every single soul – willingly or by compulsion. The following Qur’anic verse is cited to support this claim: “We have not sent you [O Prophet] but as a bringer of good tidings and a warner to all people, but most of them do not understand.”²⁰ The Qur’an introduces Muḥammad as the ‘seal of the prophets’ and hence his *sharī‘a* is expected to abrogate all previous laws and legal systems. The author is attempting to set the ground for establishing the religious authority of the imams, for they are delegated, in subsequent passages, with the same role and responsibilities as the prophets. In other words, imamate is seen as an extension to the institution of prophethood.

Towards the end of the first section, ‘Alī b. Muḥammad lists four characteristics of *sharī‘a* [1.1.3]: first, it is consistent with the laws of creation; second, it is parallel to astronomical celestial arrangements; third, it contains apparent (*ẓahr*) and hidden meaning (*baṭn*); fourth, it has form (*lafẓ*) and essence (*ma‘na*). The author neither elaborates upon these features nor offers any example to elucidate their meanings. He explains, on the contrary, the purpose of a multifaceted *sharī‘a*. It is due to the differences in the levels of understanding of the audience, the author claims, that the *sharī‘a* is multidimensional. No one should be deprived of reaping the benefits of *sharī‘a*: from those seeking its most basic understanding to the one pursuing its nuanced interpretations. The other purpose of a multifaceted *sharī‘a*, the author concludes, is to encourage believers to keep aspiring for higher levels of understanding: from apparent meaning (*ẓahr*) to hidden meaning (*baṭn*) and from reading form (*lafẓ*) to exploring its essence (*ma‘nā*). The esoteric interpretation of sacred texts is the hallmark of the Isma‘ili intellectual tradition. ‘Alī b. Muḥammad is most likely relying on earlier Isma‘ili texts when he is referring to terms such as *ẓahr*, *baṭn*, *lafẓ* and *ma‘nā*. Al-Qāḍī al-Nu‘mān (d. 363/974), for instance, composed his *Ḥudūd al-ma‘rifa fī tafsīr al-Qur’ān wa-l-tanbīh ‘alā l-ta’wīl*, *Asās al-ta’wīl* and *Ta’wīl al-da‘ā’im* to refute those who deny that *sharī‘a* laws carry hidden and exoteric meanings. To understand what is meant by the hidden meaning of the *sharī‘a*, a few examples merit mentioning. In the *Ta’wīl al-da‘ā’im*, the ruling concerning washing two hands in ablution (*wuḍū’*) is interpreted as submitting to the commands of the *Imām* and *Ḥujjat*.²¹ In another instance, the report that encourages one to take refuge to mosques during solar or lunar eclipses is interpreted as referring to taking recourse to the statements of the *dā‘īs* (in the metaphor, the “mosques”) when the reports of the *Imām* (the “sun”) and *Ḥujjat* (the “moon”) are obscured.²² In a third example, the impermissibility of shaving one’s head in the state of *iḥrām* in *ḥajj* is interpreted as a prohibition on disclosing the secrets of the *Imām*.²³ ‘Alī b. Muḥammad is most likely referring to similar allegorical interpretations when he writes about core hidden meaning of the *sharī‘a*.

[1.2] Section Two

The second section [1.2] expands on the issues discussed in the first section. It revolves around the idea that human beings cannot attain salvation unless God intervenes by sending prophets and imams. In this section, ‘Alī b. Muḥammad engages with an imaginary interlocutor who argues against the need for a religious authority and questions why it had to be restricted to one individual (prophet or an imam). The justice, mercy, kindness and grace of God demand, the interlocutor argues, that every individual should enjoy equal share in understanding the divine guidance. This impartial treatment will ensure both universal acceptance of the divine message and equal status of the believers in the hereafter. Therefore, the solution to this problem does not

-بعون الله تعالى ومادة وليه صلح في أرضه⁴⁴ معارضة لسؤاله بسؤال و تبيننا له: أن العقول تضيق عنها إن لم يشرق عليها نور أولياء الله عليهم السلام⁴⁵ حلبة هذا المجال، وقد قيل كم من⁴⁶ مسألة كان جوابها مسألة، بل كان الأولى برحمته وعدله خلقهم في الجنة منعمين وتخليدهم فيها أبداً مكرمين من غير امتحان لهم واختبار،⁴⁷ بل⁴⁸ يلزمان فاعلهما⁴⁹ آية العجز والاضطرار، سيما مع إحاطة علمه تعالى⁵⁰ بطاعة مستوجبي الجنة ومعصية مستحقي النار، وكون واسع قدرته تحتل⁵¹ إلهام جميع النفوس تقواها ونفاذ مشيئته بذلك، كما قال الله تعالى: ﴿وَلَوْ شِئْنَا لَآتَيْنَا كُلَّ نَفْسٍ هُدًى﴾⁵²، لكن في خلقهم وتكوينهم وتخييرهم -أعني⁵³ نوع البشر- وتمكينهم وبعث الرسل إليهم وإقامة الحجّة منهم عليهم، حكمة بالغة يعلمها⁵⁴ أولو الأبواب، ومنة سابعة يستحقها⁵⁵ ورثة علم الكآب، حسب ما رمز به سيدنا المؤيد في الدين -أعلى الله قدسه- عند ذكر العلة في ذلك⁵⁶ قال: ⁵⁷ «الحمد لله الذي بنى على العسر واليسر الأمور، وأجرى على الحلو والمر الدهور، لعله منها الأفهام اعتلت، وفيها الأوهام ضلت،⁵⁸ وطال فيها الكلام، واستمر في الفحص⁵⁹ عنها الخصام، فما خلصت⁶⁰ من وثاق الحيرة⁶¹ فيها النفوس، ولا انفكت⁶² من قناع العجز باستقصائها الرؤوس⁶³»،⁶⁴ فإن ادعى مدّع أن سبب ذلك وعلة⁶⁵ لكي يعبدوا⁶⁶ الله تعالى⁶⁷ كما قال سبحانه⁶⁸: ﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ﴾⁶⁹ فليعلم أن العبادة المطلوبة منهم لا تخلو: إما لجر⁷⁰ منفعة من طالبا إليه، أو لدفع مضرة عنه، وكلا الوجهين آية النقص⁷¹ -تعالى الله عن ذلك- وإذا بطل جر المنفعة ودفع المضرة كان ما عدا ذلك⁷² عبثاً، والله -سبحانه- متعال⁷³ عن جميع ذلك. فإذا للآية معنى غير ما يدل عليه ظاهر التلاوة، تفرد⁷⁴ بعلم ذلك وعلم العلة الموجبة لخلق الخليقة على ما هم عليه الأئمة الأطهار، وامتاز بمعرفتها النجباء الأخيار، وضل في مسالكها الجهلاء⁷⁵ الأغمار،⁷⁶ وكان جهلهم سبيلاً إلى تشبّهم واختلافاتهم وتفرقهم على تبين

44 missing in JS and U. في أرضه صلح

45 أولياء الله تعالى JS:

46 Missing in A2, K and U.

47 K: اختيار

48 Missing in JS.

49 K: فاعلهما

50 Missing in U.

51 K: تحمل

52 Qur'an 32:13

53 JS: يعني

54 U: تعلبها

55 JS: فيستحقها

56 missing in U. في ذلك

57 A2: قال الله

58 Missing in JS, A and K.

59 K, U: للفحص

60 U: خلصت

61 في الفحص عنها الخصام فما خلصت من وثاق الحيرة

missing in A.

62 K: ولانفكت

63 U: عن

64 A, JS, K, U: الرؤس

65 مجموعة الأدعية المؤيدية، صص 186-187

66 A: علة

67 A, K: يعبد U: يعبدو

68 Missing in JS.

69 Missing in A.

70 Qur'an 51:56.

71 A: جر

72 K: النقضين

73 miss- وإذا بطل جر المنفعة ودفع المضرة كان ما عدا ذلك ing in A2.

74 U: متعال

75 JS: وتفرد

76 K: جهلاء

77 JS: وأغمار

lie, the interlocutor posits, in sending many more prophets and imams (perhaps beyond that which is necessary). Rather it lies in giving equal share of understanding to each and every individual. It is more befitting to God's justice to adopt the latter course of action, he concludes.

'Alī b. Muḥammad does not engage in a detailed explanation of his position vis-à-vis this interlocutor's objection. He rather begins by posing a counter argument justifying that 'many times the response to a question has to be a counter-question' (*kam min mas'ala kāna jawābuhā mas'ala*). It might be more befitting to God's mercy, he counter-argues, that he granted paradise to every single soul, bestowing upon them all his blessings and honouring them all with eternity without testing them in this world at all. He then entertains a potential objection from the opponent. The opponent might argue that God's justice and mercy demand that everyone should be gifted with equal resources, opportunities and capacities for accepting divine guidance and hence enjoying equal status in this world and the hereafter. The author does not find such a line of argument convincing. He retreats to his previous argument by stating that if that were the case, God could have avoided creation of this world in the first place and created everyone in paradise! The problem is compounded by the fact, 'Alī b. Muḥammad adds, that testing human beings runs the risk of God being perceived as incapable and incompetent of making a judgement without some sort of test – whereas his knowledge, all recognise, knows no limit: He knows who will enter paradise and whose sins will lead them to hell; his limitless power can lead everyone to the right path and his will could be executed without fail. To support his claim, the following Qur'anic verse is quoted: "If we had so willed, we could certainly have given every soul its guidance."²⁴

After having presented the objections and his responses, 'Alī b. Muḥammad expresses his views concerning these theological questions. Human beings are, he argues, deficient in their intellect. The broader questions of purpose of creation, institution of prophethood, purpose of revelation etc. are beyond ordinary human comprehension. The author asserts that this wisdom is only known to 'the people of understanding' (*ulū l-albāb*)²⁵ and 'the inheritors of the knowledge of the Book' (*warathat 'ilm al-kitāb*)²⁶ – two unambiguous references to the Imams and Isma'īlī *dā'īs*. To explain the limitations of ordinary human intellect, 'Alī b. Muḥammad cites a passage from al-Mu'ayyad fī l-Dīn al-Shīrāzī's *Majmū'at al-ad'iyā*²⁷: "Praise be to God who designed the affairs [of this world] filled with hardship and ease and who created time engulfed in sweetness and bitterness. This complex structure is due to a reason that is not known to [our] intellect; whose understanding bewilders [our] imagination; which merits a prolonged discussion; and that upon which heretics have strived to get a grip. [It is so unfathomable that] no soul has been relieved from the bond of bewilderment and no one could hide behind the mask of incompetency and helplessness."²⁸

'Alī b. Muḥammad then returns to responding to another objection from an unknown respondent; this interlocutor argues that the purpose of creation is to worship God as illustrated in the verse: "I have created Jinns and men only so that they may worship Me."²⁹ This verse indicates, the respondent posits, that the wisdom of creation is not only comprehensible but also known to us through the Qur'an. The broader claim of the respondent is that the Qur'an could be understood without the intervention of the prophets, imams and *dā'īs*. 'Alī b. Muḥammad objects to this understanding but without providing an alternative interpretation of the verse. He states that any demand of obedience is either to procure benefit (*jarr manfa'a*) or to avert potential harm (*daf' maḍarra*) – neither of which could be conceived for God who is exalted above all limitations. One cannot argue, the author adds, that the aim of demanding worship is neither to procure benefit nor averting harm, for it might result in accusing God of engaging in a futile exercise

اعتقاداتهم، فضلوا إلا من عصم الله من الأمة⁷⁸ باتباع الأدلاء،⁷⁹ أبواب الرحمة، المخرجين من ظلم الشكوك إلى أنوار اليقين، والمخلصين⁸⁰ من مهاوي التشبيه ببراهين المحققين.

[1.3] الفصل الثالث من الباب الأول:⁸¹

وكان المجيبون للنبي⁸² صلح فيما أتى به السامعون لمجمل خطابه ينقسمون على اختصار⁸³ أصولهم دون فروعهم أربع فرق:

[1.3.1] فرقة سمعت ما أتى به النبي⁸⁴ صلح من نص الكلام في القرآن والشرعة،⁸⁵ فقبلته على ظاهر لفظه تقليداً، وفندت من زعم⁸⁶ أنه يتضمن معاني غير ما دلت⁸⁷ عليه ظاهر الألفاظ تفنيداً، وأبطلت العيان والعقول، وكفرت السائل عن لميات ذلك والمسئول. وهؤلاء هم الحشوية⁸⁸ على اختلاف فرقهم وتشتتهم في الفروع وتمزقهم.

[1.3.2] والفرقة الثانية أنكرت عقولها ما ورد في ظاهر تلاوة القرآن من الاختلاف والتناقض، وما تولد منه بين الفرق من التنازع والتعارض، و⁸⁹ ما تنفر منه العقول في ظاهر الألفاظ في باب التوحيد، ويقضي بالمشاركة بين المعبود⁹⁰ تعالى والعبيد، فزعمت أنها تحكم بعقولها على القرآن، وترد ما كان ألفاظه⁹¹ منافياً للعقول إلى تفسير افتعلته ممن خرف⁹² الهذيان، ولزمت في اختلاف موضوعات الشرائع والكف⁹³ عن معرفة لمياتها ملزم المقلدة الأولى. وقالت لعجزها عما تضمنته⁹⁴ من المعاني: أن السكوت عن لمياتها بذوي⁹⁵ الدين أجدر وأولى، فكان⁹⁶ قصارها فيما تهجمت⁹⁷ عليه من التفسير، وركبته من المخاطرة بمهجها في تيار ذلك والتغيير، أن ردت

78 الأئمة: A2.

79 الأدلة: A.

80 والمخلصين: A.

81 missing in A2. من الباب الأول.

82 النبي: A2.

83 الاختصار: A2.

84 Missing in A2.

85 in K. والشرعة instead of في الشرعة.

86 رغم: K.

87 دل: JS, A2, U.

88 أصحاب الحديث: A, A2.

وهؤلاء الحشوية أصحاب الحديث: U, K.

89 Missing in JS, A, U, K.

90 المعبودية: K.

91 ما كان من ألفاظه: JS, U.

92 من مزخرف الهذيان: U, K. instead of

الكفر: A2.

94 ضمته: K.

95 بذوي: A, A2, U, K.

96 وكان: JS.

97 تهجمت: A, A2, U, K.

(*‘abath*) which, again, does not befit the wise God. Since God’s governance is not dictated by any selfish motives nor could he engage in a futile exercise, the verse should indicate a ‘different’ meaning than what its wordings suggest. This ‘different’ meaning, he concludes, is only understood by the pure Imams. They are the ones who possess the authentic interpretation of this verse and not the ignorant, frivolous individuals who went astray from the right path. According to the author, the misguided souls have been misled by their ignorance which has resulted in divergence, deviation and division among Muslims. He finds a solution in following the Imams whom he identifies as the “proofs”, the “gates of mercy”, “those who expel darkness of doubts and guide human beings towards the light of certainty” and “those who save believers from the pitfalls of anthropomorphism by equipping them with solid intellectual proofs”.

[1.3] Section Three

After having discussed the need for the prophetic institution (and by extension for imamate and *dā‘iship*) in understanding the esoteric meanings of the scriptures, ‘Alī b. Muḥammad, in this section, focuses on elaborating the different approaches of interpreting a prophetic message. The author reminds the reader that these differences stem from unelaborated (*mujmal*) statements of the prophets. It is evident, he argues, that the unelaborated statements require ‘authentic’ explanations that can only be obtained from their ‘rightful’ representatives, i.e. the Imams (and *dā‘is*). The Muslim community is divided into sects, ‘Alī b. Muḥammad implies, because Muslims have failed to heed the Prophet’s appointment of the Imams. Based on the differences of their approaches and theological positions, the author divides them into four sects:

The first sect [1.3.1] consists of those who stick to the explicit meaning (*naṣṣ*) of the Qur’an and *sharī‘a* and accept their *prima facie* meanings without exercising any kind of reasoning. They vehemently reject the idea that Qur’anic verses contain layers of meaning beyond what its *prima facie* meaning suggests. By doing so, they discredit both their sense perceptions and intellect. They discredit sense perceptions by refusing to consider the visible textual evidence within the Qur’an and their intellect by disproving its unambiguous reasoning and judgement. They not only deny their own sense perceptions and intellect but also accuse others of disbelief due to their engagement in esoteric interpretation of the scriptures. The author identifies them as Ḥashwiyyas. Though they are internally divided into several sub-groups, he adds, what binds them together is their radical literalistic approach to reading of the scriptures. Historically, the term Ḥashwiyya was used, as a derogatory label, by Mu‘tazilites to refer to *Aṣḥāb al-ḥadīth* (traditionists) due to their obsession with the literal interpretation of the scriptures that extended even to anthropomorphic expressions used in the Qur’an.³⁰

The position held by the second sect [1.3.2] is at the polar opposite of the first sect. ‘Alī b. Muḥammad introduces them as the promoters of an extremist rationalist approach in their reading of scriptures. Their intellect, he asserts, prompts them to reject the *prima facie* meaning of the Qur’an, for it often leads to contradictions which, in turn, result in friction and discord among the believers. According to the author, they are particularly concerned about those verses that portray God as one possessing human characteristics. The *prima facie* meaning of these verses implies that certain features are shared between God and humans – an implication rejected by all doctrinal schools. ‘Alī b. Muḥammad does not give any example. The popular example used by the theologians concerns with the idea of visibility or invisibility of God on the Day of Judgment (i.e. the beatific vision). The verse in question is as follows: “Some faces will be resplendent on

منصوص القرآن وأتت بما لم يقدّم عليه للعقل أقل دليل ولا⁹⁹ أيسر برهان، فكان¹⁰⁰ خطئها أكثر وحظها من الوزر في الاعتراض على الله وعلى أوليائه أوفر. وهذه الفرقة هي¹⁰¹ المعتزلة أصحاب الرأي والكلام، ومن قال بقولهم من تابعي الأهواء¹⁰² المدعين¹⁰³ النظر واستعمال العقول،¹⁰⁴ وهم¹⁰⁵ أضل من الأنعام.¹⁰⁶

[1.3.3] والفرقة الثالثة سمعت ظاهر التلاوة، فتوهمت¹⁰⁷ لما جهلت أنها تقضي بالتناقض بينها والاختلاف، واستبعدت أن يكون بينها وبين العقول أدنى مناسبة من الائتلاف، وسمعت ما تعاطت فرقة أهل الرأي من التفسير، وتهجمت¹⁰⁸ عليه من الأمر المهم¹⁰⁹ الخطير القاضي بنقض ظاهر المباني المعطل عما رمت¹¹⁰ من استنباط¹¹¹ خفي المعاني، فزادها ذلك أعني الفرقة¹¹² الثالثة إنكاراً، وأشربها عتوا على الرسل ع¹¹³ واستكباراً، وحملها على رميهم بالكذب، ونسبهم إلى سائر أهل المخارق والأكاذيب، فانسلخت¹¹⁴ بذلك من الإسلام تزندقاً، وإلحاداً، ومروقاً¹¹⁵ عن الملة، وارتداداً. وهذه الفرقة وإن¹¹⁶ لم يوجد لها عين قائمة يشار إليها، ولا جماعة مجتمعة يقع التعيين عليها، لكون سيف الشريعة منقضى¹¹⁷ لحصادها، وأيدي الجمهور مجتمعة على حربها وعنادها. ومقاتلتها أكبر شاهد على فسادها. فهي لا توجد إلا متحصنة بمعقل الشريعة، وإن أجنّت هذه الاعتقادات الشنيعة فقد تظهر¹¹⁸ منها في فلتات الكلام وتبين¹¹⁹ منها للذكر¹²⁰ في اعتراضها¹²¹ على الأوامر النبوية اعتراضات ملفعة بثبات الاستفهام. فهي تنسب إلى الإسلام بظاهر إقرارها، وإن كانت قد مرقت منه بعض جودها وإنكارها. وهي أعظم الفرق الثلاث كفراً، وأشدّها ضلالاً ونكراً، وأقلّها في الجمهور وجوداً، وأنكأها كلوما،¹²² وأكثرها عنوداً.

98 JS: تقم

99 لا missing in A2, U and K.

100 A, A2, U, K: وكان

101 Missing in A, U and K.

102 JS: الأهواء

103 A2: المدعين

104 K: القول

105 A, K: هم

106 Reference to Qur'an 25:44.

107 A: فتوهمه

108 A, A2, U, K: تهجمت

109 Missing in A.

110 JS, A, U, K: رامت

111 K: الاستنباط

112 A, U: هذه الفرقة

113 Missing in JS.

114 K: فانساخت

115 missing in JS.

116 missing in A.

117 A, U, K: منتضى

118 A, A2, U, K: يظهر

119 JS, A2, U, K: ويتبين

120 U, K: للزكي

121 JS, U: اعتراضاتها

122 missing in A2. وجوداً وأنكأها كلوما

that day (Day of Judgment) while looking toward their Lord.”³¹ The *prima facie* meaning of this verse is problematic due to its portrayal of God as possessing a body. This anthropomorphic expression, the rationalists argue, should be read in a metaphorical sense.

Given the adaptation of a synthetic approach of reason and revelation by Isma‘īlis, one would expect from our author to extend his support for such rationalistic interpretation. On the contrary, he vehemently rejects it. He accuses the rationalists of excessive reliance on reasoning, so much so that they have become well-known for their altering of scriptures in favour of personal reasoning. ‘Alī b. Muḥammad lambasts this group whom he identifies as Mu‘tazila by implying that they have taken a dangerous route by rejecting the explicit text (*maṣṣūṣ*) of the Qur’an. They profess the authority of reason which he believes is based on speculative reasoning. According to ‘Alī b. Muḥammad, they cannot produce the smallest indicator (*aqall dalīl*) or slightest proof (*aysar burhān*) to buttress their claim. Their mistakes are manifold and they have accumulated undue burdens by entering the realm of God and his chosen ones (Imams). Our author asserts that the flagbearers of the proponents of speculative reasoning are Mu‘tazilites. There are others, he adds but without disclosing their identity, who fit in the same category due to their obsession with the rationalistic approach. The author concludes that they (i.e. Mu‘tazilites and other like-minded groups) are worse and misguided than the cattle.³²

It should be noted, as we shall see below, that the rationalists are not critiqued for adopting metaphorical interpretations of the verses containing anthropomorphic descriptions of God, for Isma‘īlis hold the same position, rather for indulging in a task (i.e. the interpretation of the divine scriptures) for which they were not authorised. This authority, according to our author, solely lies with the prophets, Imams and *dā‘īs*.

The third sect [1.3.3] comprises those who see revelation and reason at polar opposites. According to them, ‘Alī b. Muḥammad explains, there is not the slightest harmony (*adnā munāsaba*) between them. According to the author, they have been misled by the apparent reading of the Qur’an (without seeking the authentic interpretations from the Imams). In an enterprise to reconcile between the judgment of their reason and the apparent meaning of the Qur’anic verses, ‘Alī b. Muḥammad explains, they attempted to attach themselves to the interpretations offered by the second group (i.e. the Mu‘tazilites and their associates). This too did not satisfy their curiosity, but rather it resulted in further confusion. This is because, the author deliberates, the rationalists ignored the evident text of the Qur’an and relied on their obscure personal independent reasoning. ‘Alī b. Muḥammad implies that the entire enterprise has led them to denounce faith; deny revelation; refute the teachings of the prophets; and accuse them of falsehood. Consequently, they abandoned Islam and indulged in apostasy, blasphemy and heresy.

‘Alī b. Muḥammad appears to struggle with identifying this group with a specific title. He justifies that there are no distinct features that characterise the proponents of such views, nor have they an organised community. He then speculates that it might be due to the fear of execution, since the *sharī‘a* has strict rulings concerning apostasy, blasphemy and heresy, such that they remain in hiding.

The author then turns to critiquing, without taking the opportunity to provide the details of his arguments, what he considers to be their corrupt belief system. Though not explicitly expressed, he argues, their thoughts creep into their words when they raise objections to scriptures. According to ‘Alī b. Muḥammad, they put on a false appearance of their Islam and so they are more dangerous than the first two groups due to their disbelief, misguidedness, stubbornness, perversion and obstinacy.

[1.3.4] والفرقة الرابعة صدقت النبي صلح فيما أتى¹²³ به من منصوص الكتاب والشرعة، وبحث عما ينطوي¹²⁴ عليه من المعاني الرائقة البديعة، وقابلت أمر الله تعالى¹²⁵ بالامتثال في سؤال من أمر بالسؤال لهم،¹²⁶ والرد إليهم معلما لهم كيف يتعلمون، حيث قال الله تعالى: ﴿فَاسْأَلُوا أَهْلَ الذِّكْرِ إِنْ كُنْتُمْ لَا تَعْلَمُونَ﴾¹²⁷ ونظرت بعيون بصائرهما إلى ما يوهم في ظاهر تلاوته من الاختلاف فيكون حوبه كبيرا،¹²⁸ فاقترفت قول الله تعالى: ﴿أَفَلَا يَتَذَكَّرُونَ الْقُرْآنَ وَلَوْ كَانَ مِنْ عِنْدِ غَيْرِ اللَّهِ لَوَجَدُوا فِيهِ اخْتِلَافًا كَثِيرًا﴾¹²⁹ وردت ما يجب رده إلى أهل البيت المندوب إلى الرد إليهم والأخذ عنهم كما قال الله ع ج¹³⁰: ﴿وَلَوْ رَدُّوهُ إِلَى الرَّسُولِ وَإِلَى أُولِي الْأَمْرِ مِنْهُمْ لَعَلِمَ الَّذِينَ يَسْتَنْبِطُونَهُ مِنْهُمْ﴾.¹³¹ فهذه الفرقة أهل الجمع بين الظاهر والباطن، المصدّقون بمنصوصات¹³² الكتاب والشرعة ومعانيها البارز منها والكامن، المتمسكون¹³³ بالعروة الوثقى، المؤثرون لما هو خير¹³⁴ وأبقى، الجامعون بين الشرع والمعقول، المقيمون البراهين على صحة الفروع واستقامة الأصول.

[1.4] الفصل الرابع من الباب الأول¹³⁵:

وقد ضرب¹³⁶ بعض حدود الدين -قدس الله أرواحهم جميعا- في هذه الفرق¹³⁷ واختلافها في قبول ما جاء به النبي صلح مثلا يليق بإيراده بهذا الموضوع. وهو أن قال: إن مثل أتباع النبي صلح¹³⁸ في اختلافهم¹³⁹ فيما أتى به ونحا إليه كمثل قوم في بلاد لا¹⁴⁰ يعرفون النخل، حدّثهم رجل مشهور عندهم بالصدق، معروف بالثقة وقول الحق، حين نظر¹⁴¹ إلى نواة فقال: إن في ضمن هذه¹⁴² العود حلاوة شديدة،¹⁴³ فسمعوا قوله ولم يشاهدوا تلك الحلاوة عيانا، ثم غاب عنهم. فتفرقوا في قوله أربع فرق.

123 A: جاء

124 JS, U: ينطويان؛ A2: ينطق بأن؛ K: ينطويان إلى الكتاب والشرعة

125 K: عز وجل

126 JS, A2, K, U: سؤال من أمرهم بالسؤال

127 Qur'an 16:43.

128 A2: كثيرا

129 Qur'an 4:82.

130 A2, U, K: تعالى

131 Qur'an 4:83.

132 Missing in A2.

133 A2: بمنصوصات المتمسكون

134 JS: خيرا

135 Missing in A2. من الباب الأول

136 A: ضربت

137 A, A2, U: الفرقة الأربع

138 JS: صلح وعلى آله

139 A2: خلافتهم

140 Missing in A2.

141 A, A2, U: أنظر؛ K: أنظر

142 A, A2, U, K: هذا

143 JS: وشدة

The fourth sect [1.3.4], as introduced by ‘Alī b. Muḥammad, has combined both esoteric (*bāṭin*) and exoteric (*ẓāhir*) traditions, grasped both apparent (*bāriz*) and hidden (*kāmin*) meanings of the Qur’an and *sharī‘a*, mastered both rational (*ma‘qūl*) and revelatory (*shar‘*) discourses and remained firmly committed to both beliefs (*uṣūl*) and practices (*furū‘*) of the religion. These characteristics, the author asserts, manifest in the ‘followers of *Ahl al-bayt*’ by which he should mean the followers of Must‘alī-Ṭayyibī Isma‘īlī tradition. They submit to the religious authority of the Imams. This submission is neither blind (unlike the Ḥashwiyya) nor independent (unlike the Mu‘tazilites) rather it is in accordance with the commands of God. In Twelver and Isma‘īlī Shi‘i traditions two Qur’anic verse are believed to have made unambiguous reference to *Ahl al-bayt*: “People of Knowledge” (*ahl al-dhikr*)³³ and “the Ones in Authority” (*ulū l-amr*).³⁴ ‘Alī b. Muḥammad invokes these two references to assert the religious authority of the “People of the House” (the *Ahl al-bayt*). The first verse instructs the believers to seek guidance from the “People of Knowledge”. The second verse appears to be more explicit in implying that the ultimate sources of divine guidance are the “the Ones in Authority”. The verse reads: “When news concerning peace or fear comes to them, they go about spreading it. Had they referred it to the Messenger and to “the Ones in Authority” among them, the truth of the matter would have come to the knowledge of those of them who are able to investigate.” The followers of *Ahl al-bayt*, the author asserts, refused to limit themselves to the superficial reading of the Qur’an that had led the other sects to contradictions and disputes. By citing the Qur’anic verse, “Do they not reflect on the Qur’an? Had it been from other than Allah, they would surely have found much discrepancy in it,”³⁵ ‘Alī b. Muḥammad concludes that a) Qur’an has no discrepancies and b) the apparent contradiction of the verses can be resolved by referring to the statements of the Imams.

This line of argumentation is a recurring theme in Isma‘īlī scholarly tradition. Al-Qāḍī al-Nu‘mān, for instance, dedicates an entire section to the differences between submission to illegitimate authorities and referral to legitimate authorities in his *Ikhtilāf uṣūl al-madhāhib*.³⁶ There is an unequivocal reference, he argues, to the Imams in the verses of “the Ones in Authority” and “the People of Knowledge”. Contrary to al-Qāḍī al-Nu‘mān who not only justifies his own position but also refutes Sunni opinions that identify these phrases as reference to the authority of military commanders, rulers, religious scholars and jurists, ‘Alī b. Muḥammad makes no effort to elaborate them.³⁷ This is yet another indication that suggests that the *Mukhtaṣar al-uṣūl* is a succinct work composed for the circles of Musta‘lī-Ṭayyibī *da‘wa*.

[1.4] Section Four

This section is perhaps the most interesting section of Chapter One. It attempts to breakdown complex ideas and theories by the means of a parable that illustrates the worldview and framework of the aforementioned four sects [1.3.1–1.3.4]. ‘Alī b. Muḥammad attributes this parable to a certain Isma‘īlī *dā‘ī* (*ba‘ḍ ḥudūd al-dīn*). It is about a community of people living in a town who had never seen a palm tree. They knew nothing about its shape, colour, fruits or leaves. Once, a reliable, trustworthy and righteous individual took the initiative of educating them about palm trees. He carried a date stone with him to the town. He gathered people around him and described the taste and texture of the fleshy fruit that engulfs the date stone. The community paid attention to what he had to say about the sweetness but could not taste the dates, since there were no palm trees in the town. After some days, the learned individual disappeared. The community split, in reference to his statements and descriptions of dates and palm trees, into four groups.

[1.4.1] فرقة قالت: الرجل عندنا صادق، لا يقول إلا الحق، وإن لم نشاهد الحلاوة التي وصف، ولم نعرف منها ما عرف، ولعل حواسنا لم تدركها ولم تهتد¹⁴⁴ إلى مشاهدتها، فأكذبوا حواسهم تقليدا للمخبر¹⁴⁵ وثقة به، ودفعوا العيان -وهو أكبر شاهد-، وأبطلوا حكم العقول في تصديقهم بما لم يشاهدوا حقيقته بعيان ولا دليل. فهؤلاء أمثال الحشوية المقلدين، الملتزمين بظاهر الخطاب، الأغبياء عما تضمن لفظه من لبّ الباب.

[1.4.2] وفرقة ثانية قالت: لا يجوز لنا أن نصدقه في حلاوة لم نرها، ولعل ما أشار إليه هو في ضمن تلك النواة وباطنها،¹⁴⁶ والأصلح أن نشق النواة،¹⁴⁷ ونطلب ما أشار إليه. فعمدوا إلى شق النواة فلم يجدوا¹⁴⁸ مطلبهم، ولا أصابوا مرادهم، فحصلوا على شق العود¹⁴⁹ دون الظفر¹⁵⁰ بالغرض المقصود، فتحيرت قلوبهم، وأنكرت قول المخبر، وتظاهرت بالتصديق له لما ظهر من سالف صدقه وصحة إخباره.¹⁵¹ ورأت هذه الفرقة أن لها بفعلها في البحث والاجتهاد بزعمها مزية على المقلد¹⁵² وإن لم¹⁵³ تظفر بشئ من ذلك السر العجيب. وعندهم أن كل مجتهد مصيب. وهؤلاء أمثال أصحاب أهل الرأي¹⁵⁴ من¹⁵⁵ المعتزلة وغيرهم المتكلفين استنباط المعاني، المخرجة لهم بزعمهم عن التشبيه¹⁵⁶ لباريهم، فكان قصاراهم رد ظاهر اللفظ¹⁵⁷ المنصوص من غير ظفر بما ظفر به العلماء من أهل الخصوص.¹⁵⁸

144 U: نهتد

145 JS: تقليد المخبر

146 A: وباطنا

147 Missing in A.

148 U: تجدوا

149 K: العود النواة

150 JS: النظر

151 JS: أختاره

152 JS, U: مزية على المقلد instead of مزية على المقلدة

K: مزية على المقلدة

153 U: الذي

154 JS: وهؤلاء أصحاب أمثال الرأي

A: وهؤلاء أمثال أهل الرأي

155 Missing in A.

156 JS: من التشبيه

157 JS: الألفاظ

158 JS: الخصوص

The author uses this parable to illustrate the characteristics of the four sects mentioned in Section Three [1.3]. Each of the four groups mentioned in this section corresponds to one of the sects discussed in the previous section. It is evident that the Prophet (and Imams, and then *dā’īs* in the absence of the Prophet and Imams) are represented by the learned and reliable individual (henceforth “the messenger”) in this parable; the Muslim community is the community of the town; the palm tree corresponds to the source of the Qur’an; and the date resembles the Qur’an itself. ‘Alī b. Muḥammad then engages in explaining the positions of each of those four sects in light of this parable (i.e. how they reacted and responded to the message of the messenger).

The first group [1.4.1], the author introduces, acknowledged the honesty and reliability of the messenger. They displayed complete devotion to him by accepting his sayings. Despite their inability to independently verify his message, they whole-heartedly embraced it. In doing so, they ignored, ‘Alī b. Muḥammad implies, their own sensory perception which he calls “their best witness” (*akbar shāhid*). Though human senses are bound by various limitations, they nonetheless play a critical role in being the first and primary means of acquiring knowledge. In our case, the first group chose to blindly follow the messenger without even seeing the things he described. They also abandoned the judgment of their intellect which dictates ‘nothing should be accepted unless one observes it or is provided with a clear evidence’. In ‘Alī b. Muḥammad’s schema, this group corresponds to the first sect [1.3.1 above], i.e. the Ḥashwiyya – the followers of *sharī’a* who commit to the apparent speech of the Qur’an but remain oblivious to its core meanings.

The second group [1.4.2] is portrayed as sceptics. They do not deem it appropriate, the author explains, to believe in something they have not observed. At the same time, they do not want to dismiss the possibility of the authenticity of the message. In order to verify the report of the messenger, they started investigating the date stone. They broke it in order to identify the source of its sweetness. This adventure resulted in breaking the date stone, on the one hand, and failing to discover the source of sweetness, on the other. According to ‘Alī b. Muḥammad, conducting such an experiment is tantamount to rejecting the messenger. The fact that they broke the date stone indicate their disregard for both the message and its messenger. The author is extremely suspicious about their intentions. He states that the proponents of this method might come across as accepting the message of the messenger, because of their previous encounters in which he proved to be reliable, but, in essence, they are merely paying lip service to his mission without holding any faith in it. This group, ‘Alī b. Muḥammad notes, claims superiority over the first group, for their attempts entail a certain level of intellectual application. Nonetheless, he adds, they too have failed to verify and comprehend the message of the messenger. ‘Alī b. Muḥammad then exposes their tactics for hiding their failure. They subscribe, he explains, to the doctrine of *taṣwīb* which dictates every *mujtahid* is right (*kull mujtahid muṣīb*).³⁸ This theory of infallibilism renders a jurist immune from the consequences of his errant judgement. According to our author, the followers of this group invoke the doctrine of *taṣwīb* to justify the consequences of their speculative reasoning.

This group corresponds to the second sect mentioned in Section Two [1.3.2 above]. ‘Alī b. Muḥammad reintroduces them here as Mu‘tazilites, the partisans of personal opinions, and others who burdened themselves with interpreting verses that have anthropomorphic expressions. They attempted, he concludes, to highlight God’s absolute transcendence but ended up dismissing the explicit (*al-manṣūṣ*) meaning of the text without having attained the level of understanding of insightful scholars (*ahl al-khuṣūṣ*).

[1.4.3] وفرقة ثالثة نظرت إلى تقليد الفرقة الأولى وإبطال عيانها ودفعها لحكم العقل وهيماها، و¹⁵⁹ إلى تعاطي الفرقة الثانية لاستنباطها ما¹⁶⁰ رامته من غير طريقة¹⁶¹ حصولها¹⁶² على رد المنصوص من غير وصول¹⁶³ إلى تحقيقه.¹⁶⁴ فقالت لضلالها¹⁶⁵ وجهلها: ما نشك أن الرجل¹⁶⁶ قد سخر بالقوم، وهزأ بهم، حتى ظنوا ما لا حقيقة له، وصدقوا ما لم يتضح لهم عيانه ولم¹⁶⁷ يشهد لهم برهانه. فهؤلاء أمثال الزنادقة المعطلين والملاحدة المبطلين.

[1.4.4] وفرقة رابعة قالت: نحن¹⁶⁸ لا نشك في صدق المخبر، ولا نرتاب في نصيحته،¹⁶⁹ إلا أنه ينبغي لنا أن لا ندفع حواسنا العيانية، ولا نبطل أحكام عقولنا البرهانية، ولعل للمخبر في ذلك رمزا محبوب المعاني،¹⁷⁰ ومذهبا عنده غير ما إليه ذهبنا. فطالبوا علم ذلك من أقرب الناس إلى ذلك المخبر،¹⁷¹ وضرعوا إليه في اطلاعهم¹⁷² على ما عنده من ذلك السر. فقال: إن ذلك الحكيم لم يخبر¹⁷³ إلا بالحق، ولا فاه إلا بالصدق، إلا أن الطريق إلى ذلك غير الذي تطرقت، والمذهب إليه غير ما ذهبتم. فدوتكم فاغرسوا¹⁷⁴ العود، وتعاهدوه بالسقي، وانتظروا منه الطلع، وتأنوا به أو أن بلوغ الكمال، تجدوا صدق المقال. ففعلوا ما أشار به فحصلوا على تصديق المخبر يقينا، وقامت لهم شواهد¹⁷⁵ الحس¹⁷⁶ عيانا، وأفادهم العقل برهانا. فحمدوا على¹⁷⁷ عاقبة بحثهم، وظفروا من الثرة بمراهم. فهؤلاء أهل الحق والحقيقة، الفائزون بسلوك أوضح طريقة.

والحمد لله على ما ألهمنا من الرشاد، وعصمنا بولاية الأئمة الأجداد وحدودهم المخرجين من العدم إلى الإيجاد -عليهم السلام جميعا-.¹⁷⁸

159 Missing in U.

160 K: طريقة ما

161 Missing in U and K.

162 A: وحصولها

163 U, K: طريقة الوصول

164 A2: رد الله من غير وصولها على رد المنصوص عن غير: A2: Ramteh instead of طريقة الأصول إلى تحقيقه
طريقة حصولها على رد المنصوص من غير وصول إلى تحقيقه

165 A2: ضلالها

166 A: نشك بالرجل

167 A, A2, U, K: ولا

168 Missing in JS and A.

169 K: نصحه

170 A, A2: المعنى

171 A2: المخبر

172 JS: فاطلعه

173 JS, A, U: تخبر

174 A, U, K: فاغرسوا

175 A2: شواهد: K: شواهد

176 A2: الحسد

177 Missing in JS, A2, U and K.

178 missing in JS and A. عليهم السلام جميعا

The third group [1.4.3] opposed the first group for their denial of the role of sensory perception and judgement of the intellect. They also denounced the obsession of the second group with their extra-textual interpretation of the Qur’an. The proponent of this group accuses the messenger of deceiving the community into accepting his myths and non-verifiable statements concerning dates and palm trees. The author introduces them as sceptics and heretics. The similarity between these sceptics and the followers of the third sect is that they both, contrary to the first and second groups, question the credibility of the messenger by accusing him of spreading lies and deceptions.

The fourth group [1.4.4] takes, ‘Ali b. Muḥammad explains, a moderate approach. Unlike the third group, they do not cast doubt on the righteousness of the messenger nor on his intentions. Unlike the first group, they do not dismiss the role of their sensory perceptions, nor do they suspend the judgement of their intellect. On the contrary, they believe that the messenger must have a deep symbolic meaning beyond what the apparent meaning of his message suggests. Because the messenger has left them, they make recourse to the closest of his companions in order to seek further clarification on his statements. On the persistent requests of the community, the closest companion reveals the core message of the messenger. He relates, “the wise and learned messenger has said nothing but fact. He has uttered nothing but truth. However, the approach you have adopted to understand his message is not right. Consider planting the palm tree, making sure to water it, waiting until it blossoms and having patience until it fully develops. It is then that you will be able to verify the truth of his statements.” ‘Ali b. Muḥammad continues elaborating the parable by stating that the community followed the instructions of the closest companion and thus verified the truth of his message. They employed both sensory perceptions and rational faculties to attain certainty. They were appreciative of the results of their quest and enjoyed the fruit of their excursion. The author identifies them as ‘the followers of truth and truthfulness’.

‘Ali b. Muḥammad does not name the closest companion of the messenger, nor does he shed light on the identity of ‘the followers of truth and truthfulness’. In a Shi‘i context, however, it is evident that this closest companion is meant to be ‘Ali (and by extension later Imams and *dā‘īs*). ‘The followers of truth and truthfulness’ should also refer to the followers of Musta‘lī-Ṭayyibī Isma‘īlī *da‘wa*. Musta‘lī-Ṭayyibī Isma‘īlī *da‘wa* is thus seen as *the* moderate path which takes both sensory perceptions and rational judgments into consideration but under the aegis of infallible Imams. The exoteric and esoteric teachings of the *sharī‘a*, in the Isma‘īlī worldview, must be received only from the Imams – the prerequisite of which is to subscribe to their absolute authority and to submit to their guardianship (*walāya*).

Endnotes

- 1 This chapter was prepared for publication under the auspices of the European Research Council Advanced Award: *Law, Authority and Learning in Imami Shi‘ite Islam* (LAWALISI, no. 695245) based at the University of Exeter. I am deeply grateful to Professor Robert Gleave, the director of the project and my co-editor of this volume, for his support and guidance. He often went above and beyond the call of duty in helping me with reading obscured parts of the MSs and by providing useful feedback on the earlier draft of this introduction and English commentary. I also admire him for his patience with reading the manuscript and cross-checking (*muqābala*), word by word, with the edited passages. Thanks are also due to the 45th *dā‘ī muṭlaq* of Alavi Bohra, Haatim Zakiyuddin Saheb, for his generous support throughout my research, particularly in sharing manuscripts from the Alavi *da‘wa* collection. I also express my gratitude for Professor Poonawala for his critical comments and insightful feedback on the earlier draft of this chapter. All errors that remain are mine alone.

- 2 For a detailed biography of his life and works see al-Ḥāmidī, *Risālat tuḥfat al-qulūb* (Beirut, 2012), pp. 123–124, 126, 207–208; Hamdānī, “The Dā’ī Ḥātim ibn Ibrāhīm al-Ḥāmidī (d. 596 H./1199 A.D.) and His Book *Tuḥfat al-qulūb*,” *Oriens* 23/24 (1974), pp. 258–300; al-Hamdānī, *al-Ṣulayḥiyyūn wa-l-ḥaraka al-Fāṭimiyya fi l-Yaman* (Cairo, 1955), pp. 284–291; Burhānpūrī, *Muntaza’ al-akḥbār* (Beirut, 1999), pp. 83–92; Poonawala, *Biobibliography of Ismā’īlī literature* (Malibu, 1977), pp. 156–161; Daftary, *The Ismā’īlīs* (Cambridge, 2007), pp. 266–269; Poonawala, “‘Ali b. al-Walid,” *EI3*.
- 3 For the Nizārī-Musta’lī split see Daftary, *The Ismā’īlīs*, pp. 241–243.
- 4 For the Ṭayyibī-Ḥāfiẓī split see Stern, “The Succession to the Fatimid Imam Al-Āmir, the Claims of the Later Fatimids to the Imamate, and the Rise of Ṭayyibī Ismailism,” *Oriens* 4/2 (1951), pp. 193–255; see Daftary, *The Ismā’īlīs*, pp. 246–248.
- 5 For further details on the office of *dā’ī muṭlaq* see Hamdani, “The Dā’ī Ḥātim ibn Ibrāhīm al-Ḥāmidī (d. 596 H./1199 A.D.) and His Book *Tuḥfat al-qulūb*,” pp. 275–279.
- 6 Al-Dhu’ayb b. Mūsā al-Wādī’ al-Hamdānī (d. 546/1151) was the first *dā’ī* of Musta’lī-Ṭayyibīs. He was succeeded by Ibrāhīm b. al-Ḥusayn al-Ḥāmidī (d. 557/1162). Ibrāhīm’s son Ḥātim (d. 596/1199) and grandson ‘Ali (605/1209) assumed the leadership as the third and fourth *dā’īs* respectively. See al-Hamdānī, *al-Ṣulayḥiyyūn*, pp. 268–284.
- 7 Al-Ḥāmidī, *Risālat tuḥfat al-qulūb*, pp. 207–208. His merits are also listed on pp. 123–124, 126.
- 8 Al-Ḥāmidī, *Risālat tuḥfat al-qulūb*, p. 226.
- 9 See al-Hamdānī, *al-Ṣulayḥiyyūn*, pp. 289–291; Poonawala, “‘Ali b. al-Walid,” *EI3*. Hamdānī offers brief introductions to all these sixteen titles. Poonawala, on the other hand, provides their bibliographical information after dividing them into two separate lists: published and unpublished. Poonawala’s list contains *Risālat al-bayān wa-mudḥidat al-buhtān* that has been omitted in Hamdānī’s list. Hamdānī, however, has listed a treatise entitled *Nizām al-wujūd fi tartīb al-ḥudūd fi asmā’ ḥudūd al-da’wa bi-l-Yaman fi ‘ahdihī* that is missing in Poonawala’s list.
- 10 These themes occur in following works: *Diwān fi madā’ih al-dā’ī Ḥātim b. Ibrāhīm al-Ḥāmidī wa-ustādhihi al-Shaykh Muḥammad b. Ṭāhir al-Ḥārithī* (extant in manuscript), *Lubb al-ma’ārif* (extant in manuscript), *Tuḥfat al-murtād wa-ghuṣṣat al-aqdād* (See ‘Ali b. Muḥammad b. al-Walid, *Gnosis-Texte der Ismailiten: Arabische Handschrift Ambrosiana* (Göttingen, 1943), pp. 159–170).
- 11 For the introduction of the *Mukhtaṣar al-uṣūl*, see al-Majdū’, *Fihrist al-kutub wa-l-rasā’il* (Tehran, 1966), pp. 123–124; Poonawala, *Bibliography*, pp. 159–160; Cortese, *Arabic Ismaili Manuscripts* (London, 2003), pp. 121–122. The death date of the author given here as 682/1284 appears to be incorrect; Cortese, *Ismaili and Other Arabic Manuscripts* (London, 2000), pp. 77–78.
- 12 Stewart, “Muḥammad b. Jarīr al-Ṭabarī’s *al-Bayān ‘an uṣūl al-aḥkām* and the Genre of *Uṣūl al-fiqh* in Ninth Century Baghdād,” *‘Abbasid Studies* (Leuven, 2004), pp. 321–349. Also see al-Qāḍī al-Nu’mān, *Ikhtilāf uṣūl al-madhāhib*, tr. Devin Stewart, *Disagreements of the Jurists* (New York, 2015), pp. xx-xxiii (translator’s introduction); Makdisi, *The Rise of Colleges* (Edinburgh, 1981); Haykel; Zysow, “What Makes a *Madhhab* a *Madhhab*: Zaydi Debates on the Structure of Legal Authority,” *Arabica* 59 (2012), pp. 332–371; Melchert, *The Formation of the Sunni Schools of Law* (Leiden, 1997), pp. 60, 87 and passim.
- 13 Poonawala, on the other hand, argues that *Da’ā’im al-Islām* was an ‘enduing work’ that met ‘the approval of the fourth Fatimid Caliph-Imam al-Mu’izz li-Dīn Allāh’. This was coupled, he adds, with the concealment (*satr*) of Imam al-Ṭayyib which rendered ‘modifying any aspect of the law’ a challenging task. According to Poonawala, these factors contributed to the absence of legal compositions in the subsequent years of Musta’lī-Ṭayyibī literary activities. See Poonawala, “The Evolution of al-Qāḍī al-Nu’mān’s Theory of Ismaili Jurisprudence as Reflected in the Chronology of his Works on Jurisprudence,” in *The Sound Traditions: Studies in Ismaili Texts and Thought* (Leiden, 2021), pp. 493–495.
- 14 Al-Qāḍī al-Nu’mān, *Ikhtilāf uṣūl al-madhāhib*, tr. Devin Stewart, *Disagreements of the Jurists*, pp. ix-xxviii (translator’s introduction).
- 15 Ivanow appears to have been misled by the title *Mukhtaṣar al-uṣūl* when he writes that it is an abridgment of the *Ikhtilāf uṣūl al-madhāhib*. See Ivanow, *Ismaili Literature: A Bibliographical Survey* (Tehran,

- 1963), p. 251. A cursory comparison of both the texts will reveal that they are different in style, structure, and approach.
- 16 After completing the edition of the first chapter, I learned that a Yemeni scholar, Dr. ‘Amr b. Ma‘dīkarb al-Hamdānī, has edited the entire text. The editor informed me that his MSS were of Yemeni provenance. I was also informed by the editor that the book has now been published under the title *Riṣalat mukhtaṣar al-uṣūl wa-zubdat al-maḥṣūl* (Damascus, 2020). In the same year, ‘Abd al-Razzāq Muḥammad edited five Ismā‘īlī texts among which one is the *Mukhtaṣar al-uṣūl* in *al-Kalām al-ismā‘īlī – khamsat kutub ismā‘īlī fī l-tawḥīd wa-l-bāṭin wa-l-mukāṣarat al-aqdād* (Cairo, 2021). I have yet to receive these two editions and therefore will reserve any comment on them.
 - 17 I express my gratitude to Qazi Dr. Shaikh Abbas Borhany al-Waleed, the 7th descendant from the 23rd *dā‘ī muṭlaq* Sayyidna Muḥammad ‘Izz al-Dīn b. Ḥasan (d. 946/1539), for sharing the digital copy of this MS from his personal collection.
 - 18 Aḥmad b. ‘Abdallāh (attrib.), *Rasā’il ikhwān al-ṣafā* (Beirut, 1377/1957; repr., 1425/2004), vol. 4, pp. 124 ff; al-Sijistānī, *Ithbāt al-nubū‘āt* (Beirut, 1966), p. 119; Abū Ḥatīm al-Rāzī, *A‘lām al-nubuwwa* (Tehran, 1977), pp. 227–270. For the discussion on Ismā‘īlī concept of prophethood see Poonawala, “An Ismā‘īlī Treatise on the *Ijāz al-Qur’ān*,” in *The Sound Traditions: Studies in Ismaili Texts and Thought* (Leiden, 2021), pp. 295–306.
 - 19 Qur’an 16:78.
 - 20 Qur’an 34:28.
 - 21 Al-Qāḍī al-Nu‘mān, *Tā’wīl al-da‘ā’im* (Beirut, 1426/2006), vol. 1, p. 58.
 - 22 Al-Qāḍī al-Nu‘mān, *Tā’wīl al-da‘ā’im*, vol. 1, p. 340.
 - 23 Al-Qāḍī al-Nu‘mān, *Tā’wīl al-da‘ā’im*, vol. 2, p. 144.
 - 24 Qur’an 32:13.
 - 25 Possibly referring to Qur’an 2:269; 13:19; 39:9 and *passim*.
 - 26 Possibly referring to Qur’an 7:169; 40:53.
 - 27 He is Hibatallāh b. Abī ‘Imrān b. Dāwūd al-Shīrāzī al-Mu‘yyad fī l-Dīn al-Shīrāzī (d. 470/1077). For the life and works of al-Shīrāzī see Poonawala, *Biobibliography*, pp. 103–109; Qutbuddin, “al-Mu‘ayyad al-Shīrāzī,” *EI3*.
 - 28 Al-Mu‘ayyad fī l-Dīn al-Shīrāzī, *Majmū‘at al-ad‘iyya al-Mu‘ayyidiyya*, pp. 186–187. I am grateful to Haatim Zakīyuddin Saheb for providing this reference. The verbatim is also cited in al-Ḥāmidī, *Kanz al-walad* (Beirut: Dār Ṣādir, 1391/1971), p. 100.
 - 29 Qur’an 51:56.
 - 30 Halkin, “The Ḥashwiyya,” *JAOS* 54/1 (1935), pp. 1–28; Hoover, “Ḥashwiyya,” *EI3*.
 - 31 Qur’an 75:22–23.
 - 32 Referring to Qur’an 25:44.
 - 33 Qur’an 16:43.
 - 34 Qur’an 4:83.
 - 35 Qur’an 4:82.
 - 36 Al-Qāḍī al-Nu‘mān, *Ikhtilāf uṣūl al-madhāhib*, tr. Devin Stewart, *Disagreements of the Jurists*, pp. 73–89.
 - 37 Al-Qāḍī al-Nu‘mān, *Ikhtilāf uṣūl al-madhāhib*, tr. Devin Stewart, *Disagreements of the Jurists*, pp. 46–47.
 - 38 For a detailed discussion on the origins and development of the theories of fallibility (*taṣwīb*) and infallibility (*takḥīṭ*) of independent legal interpretation (*ijtihād*) see Zysow, *The Economy of Certainty* (Atlanta, 2013), pp. 259–278.

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- Aḥmad b. 'Abdallāh (attrib.). *Rasā'il ikhwān al-ṣafā*, ed. Buṭrus al-Bustānī (Beirut: Dār Ṣādir and Dār Bayrūt, 1377/1957; repr., 1425/2004).
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